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WAKE COUNTY, NC 770
LAURA M RIDDICK
REGISTER OF DEEDS
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Prepared by and
hold for: Robert A. Brady, Attorney at Law
160 Iowa Lane, Suite 104
Cary, North Carolina 27511

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**DECLARATION FOR
KITTS CREEK BUNGALOWS**

DECLARATION FOR KITTS CREEK BUNGALOWS
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**DECLARATION FOR
KITTS CREEK BUNGALOWS**

This Declaration made and entered into as of the 27th day of September, 2007 by KCR INVESTORS, LLC and EXPERIENCEONEHOMES, LLC, (hereinafter, jointly and severally, "Declarant");

WITNESSETH:

THAT, WHEREAS, Declarant owns in fee simple the real estate designated as Submitted Property and described on Exhibit A to this Declaration and has elected to subject the Submitted Property to the provisions of Chapter 47F of the General Statutes of North Carolina, to the Master Declaration of The North River Club (hereinafter defined) and to certain covenants, restrictions, reservations, easements, servitudes, liens and charges, all of which are more particularly set forth hereinafter; and,

WHEREAS, Declarant currently owns fee simple title to other real estate and may acquire fee simple title to other real estate, both of which are defined hereinafter as Additional Property, and may hereafter elect to subject all or any portion of the Additional Property to the provisions of this Declaration; and,

WHEREAS, Declarant deems it desirable and in the best interests of all the prospective purchasers and owners of the real estate subject to this Declaration to protect the value and desirability of such real estate by providing for the development of such real estate in accordance with a common plan and the maintenance of certain shared facilities; and,

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, Declarant has caused to be created Kitts Creek Bungalows Owners Association,

Inc., a nonprofit corporation incorporated under Chapter 55A of the General Statutes of North Carolina (North Carolina Nonprofit Corporation Act).

NOW, THEREFORE, Declarant hereby covenants and declares, on behalf of itself and its successors and assigns, that the real estate designated as Submitted Property in Exhibit A hereto shall, from the date this Declaration is recorded in the Register of Deeds be held, conveyed, acquired and encumbered subject to the Act and the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all prospective purchasers and parties who may acquire any right, title, estate or interest in or to any of such real estate or who may acquire any right of occupancy or entrance upon any portion thereof, all subject to the right of Declarant or the Association to amend this Declaration according to its terms and to add all or any portion of the Additional Property to be subject to this Declaration.

ARTICLE 1

DEFINITIONS

Capitalized terms used throughout this Declaration shall have the meanings Specified for such terms below unless the context otherwise requires:

Section 1.1 Act. Act means Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

Section 1.2 Additional Property. Additional Property means any property Declarant may submit to the Declaration and the jurisdiction of the Association pursuant to Article 6.

Section 1.3 Articles or Articles of Incorporation. Articles or Articles of Incorporation means the Articles of Incorporation of Kitts Creek Bungalows Owners Association, Inc. as may be amended from time to time.

Section 1.4 Association. Association means Kitts Creek Bungalows Owners Association, Inc.

Section 1.5 Association Documents. Association Documents means collectively the Articles of Incorporation, this Declaration, the Bylaws, Rules and

Regulations, the Design Guidelines (as defined in the Master Declaration) and any resolutions adopted by the Executive Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

Section 1.6 Bylaws. Bylaws means the bylaws of The Bungalows Owners Association.

Section 1.7 Common Elements. Common Elements means any real estate within the Property owned or leased by the Association other than a Lot and, any and all personal property and fixtures owned, leased, maintained or operated by the Association for the benefit of the Property or the Owners.

Section 1.8 Common Expenses. Common Expenses means expenditures made by or financial obligations or liabilities of the Association, together with any allocations to reserves.

Section 1.9 Common Expense Liability. Common Expense Liability means the liability for Common Expenses allocated to each Lot pursuant to Section 8.2.

Section 1.10 Declarant. Declarant means KCR Investors LLC, a North Carolina limited liability company, its successors or assigns.

Section 1.11 Declaration. Declaration means this Declaration for Kitts Creek Bungalows and all amendments, restatements and revisions hereto, including all amendments to the Declaration amending the provisions herein submitting Additional Property to the terms of this Declaration and the jurisdiction of the Association.

Section 1.12 Development Period. Development Period means the period ending on the earliest of:

(a) Twenty-Five (25) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond Declarant's control, then the aforesaid period shall be extended for the length of the delay plus an additional two (2) years upon written notice to the Association of such extension;

(b) Or the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date.

Section 1.13 Dwelling Unit. Dwelling Unit means any building or structure or portion of a building or structure situated upon a Lot which is intended for use and occupancy as a detached residence for a single family.

Section 1.14 Executive Board or Board. Executive Board or Board means the executive and administrative entity established by the Articles and the Bylaws to act on behalf of the Association and function as the governing body of the Association.

Section 1.15 Improved Lot. Improved Lot is a Lot containing a Dwelling Unit for which a certificate of occupancy (temporary, conditional or final) has been issued.

Section 1.16 Landscaping. Landscaping means living plants, shrubs, trees, vegetation, ground coverings (including grass and sod), appurtenant live/growing vegetative materials, straw, mulches, composting materials, pools (other than swimming pools), ornamental ponds, ornamental structures and any other living or non-living material or structure reasonably constituting a part of any or all of the foregoing installed upon a Lot.

Section 1.17 Lot. Lot means a separately numbered or designated portion of the Property (but not including the real estate designated as Common Elements) on plats of the Property recorded in the Register of Deeds.

For all purposes set forth in the Association Documents, a Lot comes into existence on the later of the recordation in the Register of Deeds of (i) a map or plat depicting said Lot, or (ii) an amendment to this Declaration defining and subject in the proposed lot to this Declaration.

Section 1.18 Majority Vote. Majority Vote means a simple majority [more than fifty percent (50%)] of the votes actually cast in person or by proxy at a duly held meeting of the Members of the Association at which a quorum is present or at a duly held meeting of the Executive Board at which a quorum is present.

Section 1.19 Master Association. Master Association means Kitts Creek Homeowners Association, Inc.

Section 1.20 Master Declaration. Master Declaration means the Declaration of Covenants, Conditions and Restrictions for Kitts Creek recorded in the Register of Deeds.

Section 1.21 Member. Member means a Person having membership in the Association consistent with Section 3.2 of this Declaration.

Section 1.22 Mortgagee. Mortgagee means an institutional lender (commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies and any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lenders) holding a first mortgage or first deed of trust ("Mortgage") encumbering a Lot.

Section 1.23 Owner. Owner means the Owner as shown by the records/deeds in the Register of Deeds, whether one or more Persons, of a fee or undivided fee interest in a Lot in fee simple, but does not mean any Person having a interest in a Lot solely by virtue of a contract of purchase or as security for a obligation.

Section 1.24 Person. Person means one or more natural persons, corporations, partnerships, limited liability companies, trusts or other entities capable of holding title to real estate.

Section 1.25 Property. Property means, at any given time, the real estate then subject to this Declaration and includes all improvements and appurtenances thereto now or hereafter existing.

Section 1.26 Register of Deeds. Register of Deeds means the office of the Register of Deeds of Wake County, North Carolina.

Section 1.27 Rules and Regulations. Rules and Regulations means the rules and regulations governing the use, occupancy, operation and physical appearance of the Property adopted from time to time by the Board.

Section 1.28 Submitted Property. Submitted Property means the real estate designated as such in Exhibit A hereto and all real estate which is from time to time submitted to the Declaration.

Section 1.29 Unimproved Lot. Unimproved Lot is a Lot other than an Improved Lot.

Section 1.30 Upkeep. Upkeep means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

Any capitalized word or term used in this Declaration, but not defined herein or not defined herein by reference to a defined term in the Master Declaration, shall have the meaning as set forth in N.C. Gen. Stat. 47F-1-103, unless it is plainly evident from the context of this Declaration that a different meaning is intended.

ARTICLE 2

CONSTRUCTION OF ASSOCIATION DOCUMENTS

Section 2.1 Caption. The captions are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of the Article, Section, Subsection or any other portion of this Declaration.

Section 2.2 Severability. Each provision of the Association Documents is severable from every other provision and the validity of any one or more provisions shall not change the meaning of or otherwise affect any other provision.

Section 2.3 Interpretation. If there is any conflict between the Association Documents, the Declaration shall control. Particular provisions shall control over general provisions. The provisions of the Bylaws shall control over any conflicting provision of any Rules and Regulations or resolutions adopted pursuant to any of the Association Documents.

ARTICLE 3

THE BUNGALOWS OWNERS ASSOCIATION

Section 3.1 The Association. The Association is a nonprofit corporation organized and existing pursuant to Chapter 55A of the General Statutes of North Carolina charged with the duties and vested with the powers prescribed by law and set forth in the Association Documents.

Section 3.2 Membership. Members of the Association shall at all times be, and shall be limited to, the Persons who constitute Owners of the Lots. If more than one (1) Person owns a Lot, then all of the Persons who own such Lot shall constitute collectively one (1) Owner. However, if more than one (1) Person owns a Lot, then each such Person is a Member of the Association; provided that multiple Members who own one (1) Lot are entitled collectively to one (1) vote for each Lot owned. Each Person who is an Owner is entitled to attend all meetings of the Association.

Membership in the Association is mandatory. Upon acquiring title to a Lot, each new Owner shall immediately give written notice to the Secretary of the Association stating the name and address of such new Owner and the Lot acquired by such new Owner. If the new Owner fails to give the Secretary such notice within thirty (30) days of acquiring title to such Lot, then the costs of location each new Owner and reasonable record keeping costs incurred by the Association may be assessed against such Owner.

Section 3.3 Board Authority to Act. Unless otherwise specifically provided in the Association Documents, all rights, powers, and duties of the Association may be performed by the Executive Board on behalf of the Association.

ARTICLE 4

COMMON ELEMENTS

Section 4.1 Conveyance and Title. Declarant shall convey the Common Elements to the Association in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by Declarant, but subject to all easements and other encumbrances appearing of the public records including those created by this Declaration and the Master Declaration. The conveyance of the Common Elements as contemplated herein shall occur prior to or simultaneously with the conveyance of the first Lot to an Owner.

The Association shall accept title to real estate and personal property offered to the Association by Declarant.

Section 4.2 No Dedication. Nothing contained herein shall be construed as a dedication to public use or as an assumption of responsibility for Upkeep of any Common Elements by any public or municipal agency, authority or utility, nor shall it be constructed to prevent the Board of the Association from permitting public access to or use of any Common Elements.

Section 4.3 Regulation of Common Elements. The Association shall have the right to regulate the use of the Common Elements pursuant to the Act and Section 10.2 hereof and to charge fees for the use thereof. In the event the Association imposes fees for the use of the Common Elements, such fees to be charged to Persons entitled to use the Common Elements shall be uniform and shall not discriminate against any one or more Persons or groups of Persons entitled to use the Common Elements. The Association may also mortgage, dedicate, convey, grant easements and other use or possessory rights in, over, under and across the Common Elements as permitted in the Act.

ARTICLE 5

EASEMENTS

Section 5.1 Development Easements.

(1) Easements reserved to Declarant.

(a) Easement to Facilitate Development. Declarant hereby reserves to itself and its designees a nonexclusive blanket easement over and through the Property and Common Elements for all purposes reasonably related to the development and completion of improvements on the Property and Common Elements, including without limitation: (i) temporary slope and construction easements; (ii) drainage, erosion control, and storm and sanitary sewer easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter Declarant shall restore the affected area as near as practicable to its original condition); and (iii) easements for the construction, installation and Upkeep of improvements (e.g. landscaping, street lights, signage, etc.) on the Property and Common Elements, or reasonably necessary to serve the same.

(b) Easement to Facilitate Sales. Declarant hereby reserves to itself and its designees the right to: (i) use any Lots owned by Declarant, any other Lot with the written consent of the Owner thereof, or any portion of the Common Elements as models, management offices, sales office, a visitors' center, construction offices, or sales office parking areas; (ii) place and maintain, in any location on the Common Elements and on any Lot, street and directional signs, temporary promotional signs, plantings, street lights, entrance features, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and Declarant shall obtain the consent of the Owner of any Lot upon which the improvements are to be located; and (iii) relocate, within the areas permitted by this paragraph, or remove all or any of the above from time to time at Declarant's sole discretion. These rights and easements shall continue throughout the Development Period.

(c) Easement for Utilities and Related Services. Declarant hereby reserves to itself and its assignees, during the Development Period, the right to grant and reserve easements, rights of way and licenses, over, through, upon and under the Property and Common Elements for ingress, egress, installation and Upkeep of equipment for providing to any portion of the Property, Common Elements of Additional Property any utilities including, without limitation, water, sewer, drainage, gas, electricity, communication services, whether public or private, or for any other purpose necessary or desirable. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where initially installed with the permission of Declarant, where contemplated on any site plan approved by Declarant.

(d) Easements for Future Access and Utilities. Declarant hereby reserves for itself, its successors and assigns, non-exclusive easements across, under, over and upon the Common Elements for (o) ingress, egress and regress for pedestrian and vehicular access to and from the Additional Property, and (ii) the

installation, maintenance and provision of utilities including, without limitation, water, sewer, drainage, gas, electricity, communication services, whether public or private, or for any other purposes necessary or desirable for the orderly development of the Additional Property.

(e) Dedications and Easements Required by Governmental Authority. Declarant hereby reserves to itself and its designees, during the Development Period, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Elements of the Property.

(f) Easements Shown on Maps. Each Lot shall be subject to all easements, borders, buffers and the like which are shown and depicted on the maps recorded in the Register of Deeds as affecting and burdening such Lot. A "Use Easement" shown and depicted on a recorded map shall be for the benefit of the Owner of the Lot adjacent to said easement for ingress, egress and regress over and upon said easement and for purposes of landscape and hardscape improvements as may be approved by the ACC. Any landscape improvements shall be upon the express condition that said improvements must be maintained by the party making such improvements and further, that no improvements shall be made that prevent the Owner of the Lot that is subject to the easement from maintaining and repairing structures on said Owner's Lot.

(2) Further Assurances. Any and all conveyances made by Declarant to the Association with respect to any of the Common Elements or the Property shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to Declarant such further assurances of these reservations of rights and easements as may be requested.

(3) Assignment of Development Rights. Declarant may assign its rights under Section 5.1, or share such rights with, one or more other Persons, exclusively,

simultaneously or consecutively with respect to Additional Property owned by Declarant or such Persons. Declarant shall notify the Association of any such assignment or designation by Declarant.

Section 5.2 Easement for Upkeep.

(1) Association Access. Declarant, on behalf of itself and its successors and assigns, hereby grants the right of access over and through any Lot to the Association and any other Person authorized by the Executive Board, in the exercise and discharge of their respective owners and responsibilities, including without limitation to make inspections, correct any condition originating in a Lot or in the Common elements threatening another Lot or the Common Elements, correct drainage, perform installations or Upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for Upkeep, or correct any condition which violates the Association Documents. The agents, contractors, officers and directors of the Association may enter any area of any Lot in order to utilize or provide for the Upkeep of the areas subject to easements granted in this Article to the Association.

(2) Declarant Access. Until the expiration of any applicable warranty period, Declarant hereby reserves to itself and its designees a right of access over and through the Common Elements and any Lot to perform warranty-related work within the Common Elements or the Lots. Declarant may assign its rights under this subsection to, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively.

Section 5.3 Limitations on Exercise of Rights and Easements.

(1) These easements are subject to all other easements and encumbrances of record in the office of the Register of Deeds, including those created by this Declaration.

(2) Declarant or the Association, as appropriate, when exercising the rights and easements granted by this Article, shall: (i) give reasonable prior notice to all affected Owners, unless an emergency exists which precludes such notice; (ii) minimize any economic or aesthetic injury to the affected Lots or the Common Elements; and (iii)

not unreasonably interfere with the affected Owners' use, enjoyment and benefit from such Owners' Lots or the Common Elements.

(3) If an easement is relocated, the cost of such relocation shall be paid by the Person requesting the relocation.

(4) Any damage resulting from the exercise of the aforesaid rights and easements shall be promptly repaired and the site restored to the extent practicable by Declarant or the Association, as appropriate, or at the option of Declarant of the Association, the party responsible for such damage. In either case, the cost of such repair and restoration shall be paid for by the party responsible for the damage.

Section 5.4 Emergency Access. Declarant, on behalf of itself and its successors and assigns, hereby grants an easement (1) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies and (2) to the Association over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

Section 5.5 Easement for Use of Common Elements.

(1) Use and Enjoyment. Declarant hereby reserves to itself and, on behalf of itself and its successors and assigns, grants to each Owner and each Person lawfully occupying a Lot a non-exclusive right and easement of use and enjoyment in common with others of the Common Elements. Such right and easement of use and enjoyment shall be appurtenant to each Lot, whether or not mentioned in the deed thereto. Any purported conveyance or other transfer of such rights and easements without the Lot to which such rights and easements are appurtenant shall be void.

(2) Vehicle and Pedestrian Access. Declarant hereby reserves on behalf of itself and its successors and assigns during the Development Period and for so long as Declarant is an Owner, and also grants to each other Owner and each Person lawfully occupying a Lot a non-exclusive easement over all roadways, driveways, walkways, and pathways on the Common Elements for the purpose of vehicular and/or pedestrian access, ingress and egress, as appropriate, to any portion of the Property to which such Person has the right to go, subject to any Rules and Regulations promulgated by the

Association. Any purported conveyance or other transfer of such rights and easements without the Lot to which such right and easement are appurtenant shall be void.

(3) Limitations. The rights and easements of enjoyment created hereby shall be subject (in addition to any easements granted or reserved in this Declaration or pursuant to the other Association Documents) to all rights and powers of Declarant and the Association when exercised in accordance with the other applicable provisions of the Association Documents, including without limitation the Association's right to regulate the use of the Common Elements, to dedicate portions of the Common Elements and to mortgage the Common Elements.

(4) Delegation. Subject to the Rules and Regulations or such other restrictions as adopted by the Association, any Person having the right to use and enjoy the Common Elements may delegate such rights to such Person's guests, tenants, agents and invitees and to such other Persons as may be permitted by the Association.

Section 5.6 Priority and Enforcement of Easements.

(1) No Person who owns Property subject to this Declaration may subordinate the easement herein created to any subsequent encumbrance.

(2) The easements and rights granted by this Declaration shall not be enforceable by Persons to whom such easements and rights may be delegated by Owners, including without limitation the guests, tenants, agents or invitees of any Owner. This section does not affect, however, court-appointed officers in possession and control of a Lot action in the name, place and stead of Owners or any Person's right to enforce any easements or rights granted in any lease or agreement between such Person and an Owner.

ARTICLE 6

DEVELOPMENT OF THE PROPERTY

Section 6.1 Expansion by Declarant.

(a) Declarant hereby reserves an option during the Development Period to expand the Property from time to time without the consent of any Owner or Mortgagee by submitting all or any portion of the Additional Property to the provisions of this

Declaration and the jurisdiction of the Association whether or not such real estate is owned by Declarant. The option to expand prior to the end of the Development Period may be terminated only upon the recordation of an instrument in the Register of Deeds by Declarant relinquishing such option. Declarant shall add Additional Property in accordance with the procedures set forth in this Article.

(b) Declarant may unilaterally record plats of the Additional Property to expand the land area referred to as Additional Property whether or not such real estate is owned by Declarant.

Section 6.2 Procedure for Expansion. Declarant may record in the Register of Deeds one or more amendments to the Declaration submitting all or any portion of the Additional Property described therein to this Declaration and to the jurisdiction of the Association. Any such amendment may contain such additions to the provisions in this Declaration as may be necessary to reflect the different character of the Additional Property added thereby and as are not inconsistent with the overall scheme of this Declaration and the Master Plan as defined in the Master Declaration; provided, however, that such additions shall not apply to any real estate previously submitted to this Declaration. When recording an amendment adding Additional Property, appropriate plats shall be recorded showing the Additional Property being submitted to the Declaration and the jurisdiction of the Association, describing any real estate being conveyed to the Association as Common Elements, Limited Common Elements or Common Elements that may be assigned as Limited Common Elements and showing any new Lots.

ARTICLE 7

DECLARANT'S RIGHTS; TRANSFER

Section 7.1 Declarant's Rights. Declarant's Rights are those rights reserved for the benefit of Declarant as provided for and defined in the Act, as defined in the Master Declaration and set forth in the Association Documents.

Section 7.2 Transfer of Declarant's Rights. Declarant may transfer Declarant's Rights to any Person acquiring Lots or Additional Property in the manner provided in the Master Declaration.

ARTICLE 8
COMMON EXPENSES AND ASSESSMENTS

Section 8.1 Determination of Common Expenses and Assessments.

(1) Preparation and Approval of Budget.

(a) At least sixty (60) days before the beginning of each fiscal year, the Executive Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary for the ensuing fiscal year to pay Common Expenses and cost of other expenses that may be declared to be Common Expenses by the Association Documents or by resolution of the Executive Board.

(b) Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles) and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for) and replacements. At least thirty (30) days before the beginning of each fiscal year, the Executive Board shall make available a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and the assessment payable by each Owner and provide a copy of such budget to each Member. Such budget shall constitute the basis for determining the assessment against each Lot. The annual budget adopted by the Executive Board shall be presented to the Owners for ratification as provided in the Bylaws and by the Act. Should the Executive Board at any time determine, in its sole discretion, that the assessments levied are, or may prove to be insufficient to pay the Common Expenses of the Association during such fiscal year, or in the event of emergencies, the Executive Board shall have the authority to levy such additional assessments it may deem to be necessary.

Section 8.2 Assessments and Common Expenses

(1) Rate of Assessment and Payment. Subject to provisions of Section 8.3 hereof, the total amount of the estimated funds required for the management and Upkeep of the Property set forth in the budget as an annual assessment or levied as an additional assessment shall be assessed against each Lot annually in amounts as determined by the Executive Board, which said amounts shall be equal for all Lots.

(a) Any and all such assessments and other charges shall be a lien against each Owner's Lot as provided in Section 11.2 hereof. On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each Owner shall pay to the Association at such place as the Executive Board may direct that installment of the annual assessment which is due during such period. The Executive Board shall establish one or more payment periods and the due dates for each such payment in each fiscal year. All sums collected by the Executive Board with respect to assessments against the Lots or from any other source may be commingled into a single fund.

(2) Lots Added During the Fiscal Year. Notwithstanding any other provision of this Article wherever any Additional Property is added, the assessment against each Lot being added shall be prorated based upon the number of days remaining in the payment period and shall be calculated in the same manner and due in the same number of installments as the assessment for the remainder of the fiscal year against Lots already a part of the Property.

(3) Special Assessments. The Executive Board shall have the power to assess an Owner's Lot individually (i) for the amount of and costs incurred by the Association in performing Upkeep that the Owner failed to perform as required by that section, (ii) for the costs of improvements determined by the Board to be substantially for the benefit of that Owner, (iii) for the amount of any charges imposed on that Owner pursuant to Subsection 8.2(4) hereof, and (iv) for any costs incurred by the Association because of any violation or negligence for which that Owner is responsible under the Association Documents or the Act. Each such assessment shall be due ten (10) days after notice thereof is given to the Owner unless the notice specifies a later date.

(4) Optional Expenses. Upon request, the Association may provide certain services to Owners (including Declarant) on a contractual basis; provided, however, that the charge for such services shall be assessed against such Owner's Lot in accordance with the terms of the contract.

(5) Reserves. The Executive Board shall build up and maintain reasonable reserves for working capital, contingencies and replacements. Such funds shall be a Common Expense of the Association and may be deposited with any financial institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Executive Board, be invested in obligations of, fully guaranteed as to principal by, the United States of America. Reserves for items serving only certain Lots shall be accounted for and funded solely by the Owners served as a Limited Common Expense. As to each separate reserve account:

(a) Extraordinary expenditures not originally included in the annual budget, which may become necessary during the year, shall be charged first against the appropriate reserves. Except for expenses for normal Upkeep shown in the annual operating budget, all expenses for repair and replacement of physical assets maintained by the Association shall be charged first against the appropriate reserves. Unless otherwise determined by the Executive Board, the amount held as reserves shall not be substantially exceed the amount reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives.

(b) If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to each Owner (including Declarant) in proportion to the percentage (if any) of assessments paid by such Owner.

(c) If the reserves are inadequate to meet actual expenditures for any reason (including non-payment of any Owner's assessment) then the Executive Board shall, in accordance with Subsection 8.1(1)(b) hereof, levy an additional assessment against the Lots.

(d) In order to establish an initial working capital fund, upon the first conveyance of a Lot by Declarant or any successor declarant to reach Owner, each

Owner shall contribute at closing an amount equal to two-twelfths (2/12) of the estimated assessment levied for the current year against each Lot, said sum to be paid to the Association. Said sum is not an advance payment of regular assessments but shall be utilized to establish the working capital fund.

(6) Surplus and Deficit.

(a) Any amount accumulated in excess of the amount required for accrual expenses and reserves shall, at the discretion of the Executive Board, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the Owners, be credited to the next periodic installments due from Owner under the current fiscal year's budget, until exhausted, or distributed to each Owner (including Declarant) in proportion to the percentage (if any) of assessments paid by such Owner.

(b) Unless the budget for the succeeding fiscal year is adjusted to amortize the deficit during such fiscal year, any net shortage in expenses (including reserves) shall be assessed promptly against the Owners as an additional assessment in accordance with Subsection 8.1(1)(3) hereof; provided, however, that if Unimproved Lots (as defined in the Master Declaration) owned by Declarant are subject to reduced assessments in accordance with Section 8.3 hereof, then during the period Declarant owns Lots exempt from assessment Declarant shall make up the shortage (as defined in the Master Declaration) in the Association's budgeted income over the Association's expenses, but Declarant is not obligated to pay any expenses that the Association is unable to meet because of non-payment of any Owner's assessment.

Section 8.3 Exemptions. During the Development Period, Unimproved Lots owned by Declarant shall not be liable for any assessment levied by the Executive Board against any Lot. The Common Elements owned by Declarant or the Association shall be exempt from assessments and the lien created hereby.

Section 8.4 Liability for Common Expenses.

(1) Declarant and Owner Liability. Declarant for each Lot owned by Declarant, hereby covenants and agrees, and each Owner of a Lot by acceptance of a

deed therefore, whether or not so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Common Expenses and other charges assessed by the Executive Board pursuant to the provisions of this Declaration. Each Owner shall be personally liable for all assessments against such Owner's Lot. No Owner may be exempted from liability for the assessment for Common Expenses by reason of waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot. No Owner shall be liable for the payment of any part of the Common Expenses assessed against the Lot subsequent to the date of recordation of a conveyance by such Owner in fee of such Lot. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments against the latter for the proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefore, provided, however, that any such purchaser may rely on a statement of common expenses obtained pursuant to Section 8.6 herein.

(2) Mortgagee Liability. Each Mortgagee who comes into possession of a Lot by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against such Lot which accrue prior to the time such Mortgagee or purchaser comes into possession thereof. The lien created by Section 7.2 hereof shall cease to exist with respect to assessments and charges levied prior to the time title is transferred by foreclosure or by deed of assignment in lieu thereof; provided, however, that if the proceeds of a foreclosure exceed the total amount due to the Mortgagee, the excess shall first be paid to the Association and applied to the satisfaction of the lien.

Section 8.5 Collection of Assessments. Any assessment, or installation thereof, not paid within thirty (30) days after the due date shall be delinquent and shall accrue a late charge in the amount not to exceed the greater of Twenty and No/100 Dollars (\$20.00) per month or ten percent (10%) of any assessment or installment thereof unpaid. The Executive Board, or the managing agent at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any

Owner or Member which remain unpaid for more than thirty (30) days after the due date for payment thereof.

Section 8.6 Statement of Common Expenses. The Executive Board or managing agent shall provide any Member, Owner, contract purchaser or Mortgagee, within ten (10) days after a written request therefore, with a written statement of all unpaid assessments for Common Expenses due with respect to a specific Lot (or a statement that the amount of unpaid assessments is zero). No contract purchaser, Mortgagee or purchaser form a Mortgagee requesting such a statement shall be liable for, nor shall the Lot conveyed to such Person relying on such statement be subject to alien for, any amount greater than unpaid assessments or charges due prior to the date of such set forth on such statement; provided, however, that this section shall not be interrupted to release any Person from personal liability for such assessments levied while such Person owned the Lot. The Executive Board may impose a reasonable charge for the preparation of such statement.

Section 8.7 Lien for Assessment.

(1) Lien. The total annual assessment of each Owner for Common Expenses, any additional assessment, any special assessment or any other sum duly levied (including without limitation fines, charges, interest, late charges, etc.), pursuant to the Association Documents, is hereby declared to be a lien levied against any Lot owned by any Owner when a claim of lien is filed in the office of the Clerk of Court of Wake County. Until fully paid and satisfied, the lien shall apply to and encumber all of the Lots that were owned, as of the date when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Lots thereafter acquired by that Owner from the time such Owner becomes the Owner thereof. With respect to annual assessment, the lien is effective on the first day of each fiscal year of the Association and, as to additional assessments, special assessments and other sums duly levied, on the first day of the next payment period which begins more than fifteen (15) days after the date of notice to the Owner of such additional assessment, special assessment or levy. The lien created by this section shall be prior to all liens and encumbrances hereafter recorded except a first mortgage or first deed of trust held by a Motgagee, real estate taxes and other charges levied by governmental authority and made

superior by law. The personal obligation of the Owner to pay such assessment shall, in addition, remain such Owner's personal obligation and a suit to recover a money judgment for non-payment of any assessment or installment thereof; levied pursuant hereto, may be maintained without foreclosing or waiving the lien herein created to secure the same.

(2) Acceleration. In any case where an assessment against the Owner is payable in installments, upon a default by such Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Executive Board, and the entire balance of the assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner.

(3) Enforcement. The lien for assessments may be enforced and foreclosed in any manner permitted by the Act and laws of North Carolina for foreclosure of mortgages or deeds of trust containing a power of sale or by an action in the name of the Executive Board, or the managing agent, acting on behalf of the Association. The plaintiff in such a proceeding shall have the right to the appointment of a receiver, if available under the laws of North Carolina. The Association shall have the power to bid on the Lot at foreclosure or other legal sales and to acquire, hold, lease, mortgage, convey or otherwise deal with such Lot.

(4) Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 8.8 Subordination and Mortgage Protection. Notwithstanding any other provision hereof to the contrary, the lien of any assessment levied pursuant to the Association Documents upon any Lot (and any charges, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosing or any proceedings in lieu of foreclosure. Such sale or transfer shall not relieve the Mortgagee or the purchaser of the

Lot at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

ARTICLE 9

OPERATION OF THE PROPERTY

Section 9.1 Upkeep of Common Elements. The Association shall be responsible for the management and Upkeep of all of the Common Elements, which Upkeep shall be consistent with the Community-Wide Standard, as defined in the Master Declaration. If the Executive Board determines that certain Upkeep was necessitated by the negligence, misuse or neglect of any Owner, the cost of such Upkeep shall be assessed against such Owner's Lot. The Executive Board shall provide for the Upkeep of the rights-of-way along dedicated streets and roadways and dedicated easements.

Section 9.2 Association Upkeep of Dwelling Units and Lots.

(1) Dwelling Units. The Association shall be responsible for, and shall pay as a Common Expense except as otherwise set forth in this Section, Upkeep of all exterior portions of the Dwelling Unit. For purposes of this Subsection, exterior portions of the Dwelling Unit: shall mean the roof covering (i.e., shingles, tiles, etc.) and the siding materials on the exterior walls of the Dwelling Unit (i.e., wood siding, brick veneer, shakes, etc.), specifically excluding exterior components of all windows and exterior doors (including the glass panes and any storm window inserts or screens).

(2) Landscaping and Fences. The Association shall be responsible for, and shall pay as a Common Expense except as otherwise set forth in this Section, Upkeep of all Landscaping and all fences installed by the Declarant within each Lot.

(3) Limitation on Association's Obligation for Upkeep.

(a) Notwithstanding the provisions of Subsections 9.2(1) and (2) above, the Association shall not be responsible for, not bear the cost of, Upkeep which is occasioned or caused by a negligent or willful act or omission of the Owner (including any family member, tenant, guest or invitee of such Owner); the Upkeep of any Landscaping installed subsequent to the installation of the original Landscaping on the

Lot as approved by the Architectural Committee; and Upkeep necessitated or required to restore or repair the Lot or Dwelling Unit which arises from or is caused by as a result of any direct physical loss resulting from fire, flooding, wind or other natural and unnatural perils or causes. Further, notwithstanding anything to the contrary herein contained, should any Owner seek and receive approval to erect a fence upon a Lot, from and after the erection of said fence, the Association shall not be responsible for the Upkeep of any Landscaping of any portions of said Lot lying within said fence.

The Board may, upon an affirmative Majority Vote, and with the affirmative vote of not less than sixty-seven (67%) of the Owners, provide for additional Upkeep with respect to the Lots or Dwelling Units to be undertaken by the Association or to discontinue the performance of some or all of the Upkeep being performed by the Association with respect to the Lots and the Dwelling Units.

Section 9.3 Additions, Alterations or Improvements by the Owners. No Owner shall make any addition, alteration or improvement in or to any Lot (other than for normal Upkeep), the Dwelling Unit, or any improvement located on the Lot which is visible from the Common Elements or any other Lot without the prior written consent of the Architectural Committee as defined and established in the Master Declaration.

Section 9.4 Disclaimer of Liability.

(1) Bailee. The Executive Board, the Association, any Member, any Owner and Declarant shall not be considered a bailee of any personal property stored or placed on the Common Elements (including property located in vehicles parked on the Common Elements), whether or not exclusive possession of the particular area is given to an Owner for parking or otherwise, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

(2) Operational. The Association shall not be liable to any Member or Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any portion of the Property. No diminution, offset or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association to comply with any law, ordinance or with the order or directive of any governmental authority. This Section is not intended

nor shall it be construed to relieve any insurer of its contractual obligation under any policy benefiting the Association, a Member or an Owner.

ARTICLE 10
PLAN OF DEVELOPMENT, RULES AND REGULATIONS AND USE
RESTRICTIONS

Section 10.1 Plan of Development. Declarant has established a general plan of development and occupancy for the Property consistent with the Master Plan, defined in the Master Declaration, in order to protect all of Owners' quality of life and collective interest, the aesthetic and environmental quality within the Property, and the vitality of and sense of community within the Property.

Section 10.2 Authority to Promulgate Rules.

(1) Subject to the terms of this Article, the Board may adopt Rules and Regulations not inconsistent with the Use Restrictions set forth in the Master Declaration, and which are incorporated herein by reference, and other such rules and regulations permitted by, and not inconsistent with the Act.

(2) The Owners, at a meeting duly called for such purpose, may adopt Rules and Regulations which modify, cancel, limit, or create exceptions to existing Rules and Regulations of the Association by a vote of Owners representing sixty-seven percent (67%) of the total vote and with the approval of Declarant within the Class B: Control Period as defined in the Master Declaration.

(3) At least fifteen (15) days prior to the effective date of any action under subsections (1) or (2) of this Section 10.2, the Board shall send a copy of the Rules and Regulations to each Owner specifying the effective date of such Rules and Regulations.

(4) Nothing in this Article shall authorize the Board or the Owners to modify, repeal, amend, or expand the Association Documents except as set forth in such Association Documents.

Section 10.3 Use Restrictions. The Use Restrictions more particularly set forth in Article VIII of the Master Declaration are incorporated herein by reference.

Section 10.4 Rights of Owners. Rights of Owners as may be specifically set forth in the Master Declaration are incorporated herein by reference.

ARTICLE 11
ARCHITECTURAL AND DESIGN STANDARDS

The provisions of Article VII of the Master Declaration are incorporated herein by reference.

ARTICLE 12
INSURANCE

Section 12.1 Authority to Purchase.

(1) Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Executive board shall (a) purchase, to the extent reasonably available, and thereafter maintain, insurance policies relating to the Common Elements and improvements thereon, and other matters more particularly set forth in this Article and liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. The cost of all insurance policies purchase by the Board shall be a Common Expense.

(2) The Executive Board shall exercise reasonable good faith efforts to insure that each such policy provides that:

(a) Each Owner is an insured Person under the policies to the extent of his insurable interest;

(b) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policies;

(c) The insurer waives any right to claim by way of subrogation against Declarant, the Association, the Executive board, the managing agent, any

Member or the Owners and their respective households, guests, tenants, agents and invitees;

(d) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Member or any Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, agents and invitees, or of any member, officer or employee of the Executive Board or the managing agent without a prior demand in writing that the Board or the managing agent cure the defect and neither shall have so cured such defect within a reasonable time after such demand; and

(e) Such policy may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Executive Board or the managing agent.

(3) All policies of insurance shall be written by reputable companies licensed or qualified to do business in North Carolina.

(4) The deductible (if any) on insurance policy purchased by the Executive board shall be a Common Expense; provided, however, that the Association may, assess any deductible amount necessitated by the act, misuse or neglect of an Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, agents or invitees against such Owner.

(5) Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner.

Section 12.2 Other Insurance. The Executive Board shall obtain and maintain:

(1) adequate fidelity coverage to protect against dishonest acts on the part of directors, Officers, trustees and employees of the Association and all others who handle, or are responsible for handling funds of the Association, including the managing agent. If the Association has delegated some or all of the responsibility for handling funds to a managing agent, such managing agent shall be covered by its own fidelity bond. Such fidelity bonds (except for fidelity bonds obtained by the managing agent for its own personnel) shall: (i) name the Association as an obligee, and (ii) contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression;

(2) if required by a majority of the Mortgagees or governmental regulations, flood insurance in accordance with the applicable regulations for such coverage;

(3) worker's compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);

(4) to the extent coverage can be obtained at a reasonable cost, directors and officers liability insurance in an amount not less than One Million and No/100 Dollars (\$1,000,000.00); and

(5) such other insurance: (i) as the Executive Board may determine; (ii) as may be required with respect to the Additional Property by any amendment to this Declaration adding such Additional Property; or (iii) as may be requested from time to time by a Majority Vote of the Members.

Section 12.3 Separate Insurance on Lots.

Each Member or Owner must obtain insurance for such Member's or Owner's benefit, at such Member's or Owner's expense, covering the Dwelling Unit, improvements and personal property located on such Owner's Lot. No Member or Owner shall obtain separate insurance policies on the Common Elements owned by the Association.

ARTICLE 13

COMPLIANCE AND ENFORCEMENT

Section 13.1 General Default Remedies. Every Owner and occupant of any Lot shall comply with the Association Documents and the Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act.

Section 13.2 Enforcement/Sanctions. The Board or such Association agent with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing in accordance with the procedures set forth in the Declaration. Such sanctions may include, without limitation:

- (1) Imposing reasonable monetary fines which shall constitute a lien upon the Lot of the Owner;
- (2) Suspending an Owner's right to vote;
- (3) Suspending any Person's right to use any Recreational Facilities, as defined in the Master Declaration, within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Lot;
- (4) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and
- (5) Levying Assessments to cover costs incurred in bringing a Lot into compliance.

Section 13.3 Self-Help Remedies. The Board, or such other Association agent with the Board's approval, may elect to enforce any provision of the Association Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance(s) of Carteret County, North Carolina) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in Article 16 or in the Bylaws.

Section 13.4 Cumulative Remedies. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity.

Section 13.5 Association's Right Not to Take Action. The Association shall not be obligated to take action to enforce any covenant, restriction, or rule with the Board reasonably determines is, or is likely to be construed as, inconsistent with the 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 action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under other circumstances or stop the Association from enforcing any other covenant, restriction or rule.

Section 13.6 Enforcement by Owner: Nothing set forth in this Article 13 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents.

Section 13.7 No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

Section 13.8 No Waiver by Declarant. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

Section 13.9 Attorneys' Fees. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court, but In no event shall any Owner be entitled to such attorneys' fees except as otherwise provided in the Act.

ARTICLE 14

MASTER ASSOCIATION AND MASTER DECLARATION

Section 14.1 Master Association. The Owner or Owners of each Lot shall automatically be Members of the Master Association upon his, their or its acquisition of an ownership interest to any Lot. The membership of such Owner or Owners shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Lot.

Section 14.2 Administration by Master Association. In the administration, operation and management of Kitts Creek, the Master Association, subject to the provisions of the Act, shall have the authority and power to enforce the provisions of the Master Declaration, to levy and collect assessments in the manner provided therein, to adopt, promulgate and enforce such rules and regulations governing

the use of the Common Elements of the Master Association, and to exercise such other powers as set forth in the Master Declaration and the Act.

Section 14.3 Delegation of Powers. The Executive Board of the Association may delegate to the Master Association, from time to time as the Board in its discretion determines, those powers set forth in this Declaration and the Act that may be exercised by the Board of Directors of the Association. The Executive Board of the Association may thereafter revoke such delegation, from time to time, in its sole discretion and resume the obligation and responsibility for the performance of such acts and powers formerly delegated to the Master Association. Upon the delegation of any such powers as may be permitted in this Section, all provisions of N.C. Gen. Stat. 47-C-2-102, as may be applicable, shall apply.

Section 14.4 Master Declaration. The Owner or Owners of each Lot, and all persons entitled pursuant to the Master Declaration and this Declaration who use and occupy and such Lot and Dwelling Unit, shall be subject to and shall abide by all provisions of the Master Declaration.

ARTICLE 15

AMENDMENT

Section 15.1 Amendment by Declarant. Until the termination of the Development Period, Declarant may unilaterally amend this Declaration for any purpose, including, but not limited to, as provided in Article 6 of this Declaration.

Section 15.2 Amendment by the Association.

(1) The Association may amend this Declaration by at least a sixty-seven percent (67%) affirmative vote of the Members.

(2) An amendment shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and arrested by the Secretary or Assistant Secretary of the Association, and recorded in the office of the Register of Deeds.

Section 15.3 Prerequisites to Amendment by Association. Written notice of any proposed amendment shall be sent to every Member and Owner at least

thirty (30) days before any action is taken. No amendment shall be made to the Declaration during the Development Period without the prior written consent of Declarant. No amendment shall increase the financial obligations of an Owner in a discriminatory manner or further restrict development permitted on a Lot. No amendment to the Declaration shall diminish or impair the rights of Declarant, including voting or veto rights, under the Declaration without the prior written consent of Declarant. No amendment may modify this Article or the rights of any Person hereunder. Except as specifically provided in the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

ARTICLE 16

HEARING PROCEDURE

Section 16.1 Hearing Procedures. Except as may be otherwise specifically authorized by the Association Documents, and permitted by the Association Documents, the Board shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend voting or infringe upon other rights of a Member or other occupant of a Lot or Dwelling Unit for violations of the Association Documents, or for assessments or other amounts due and owing to the Association remaining unpaid for a period of thirty (30) days, or longer, unless and until the following procedure is completed:

(1) Demand. Written demand to cease and desist from an alleged violation shall be served upon the Responsible Person (hereinafter defined) specifying (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than five (5) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation may result in the imposition of a sanction after notice and hearing if the violation is not continuing. For purposes of this Article 16, the "Responsible Person" shall be any Member, Owner or a tenant occupying a Lot or Dwelling Unit pursuant to a lease proved as set forth in Section 12.4(d) hereof.

(2) Notice. At any time within twelve (12) months following such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or an adjudicatory panel appointed by the Board shall serve the Responsible Person with a written notice of a hearing to be held by the Board of the Association in executive session or an adjudicatory panel appointed by the Board; provided, however, any adjudicatory panel appointed by the Board shall be composed of Members of the Association who are not officers of the Association or members of the Board. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of hearing, which shall not be less than ten (10) days from the giving of the notice; (iii) an invitation to attend the meeting and produce any statement, evidence and witness on his or her behalf; and (iv) the proposed sanction to be imposed. The notice prescribed herein may be served by mailing a copy of said notice to the alleged violator by placing said notice in the United States mail, postage prepaid, by any method as permitted for the service of summons as set forth in Rule 4 of the North Carolina Rules of Civil Procedure or by the delivery of said notice by an officer, director or agent of the Association to the Responsible Person or to any person who may be served on the Responsible Person's behalf as provided in said Rule 4.

(3) Hearing. The hearing shall be held in executive session of the Board or an adjudicatory panel appointed by the Board pursuant to the notice affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of deliver, is entered by the officer, director, or agent who delivered such notice. The notice requirements shall be deemed satisfied if the Responsible Person appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. In addition, a written statement of the results of the hearing and the sanction, if any, imposed shall be mailed by the United States mail, postage prepaid, by the Association to the violator.

(4) Appeal. If the hearing is held before an adjudicatory panel, following such hearing and notice of a decision adverse to the violator, the Responsible

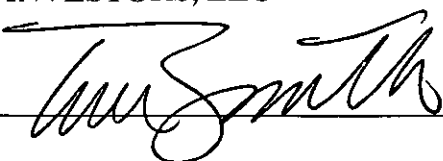
Person shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the managing agent of the Association, President or Secretary of the Association within fifteen (15) days after the date of the decision, said written notice to contain information by which the Board may notify the Responsible Person of the date of the appeal hearing. If no adjudicatory panel is appointed by the Board, no right of appeal shall exist.

(5) Sanction as Assessment. Pursuant to the provisions of this Section, a fine may be imposed by the Association is an amount not exceeding One Hundred and No/100 Dollars (\$100.00) (or any greater amount as may be provided otherwise by law or the Act) per violation of the Association Documents and without further hearing, for each day after the decision to impose such fine that the violation occurs. Any such fine shall be an assessment as set forth in this Declaration and the Act. If it is decided pursuant to the provisions of this Section that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be executed under seal and in such form as to be legal and binding, effective the day in year first above written.

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BLANK. SIGNATURES APPEAR ON THE FOLLOWING PAGE.**

KCR INVESTORS, LLC

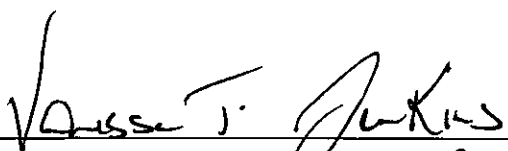
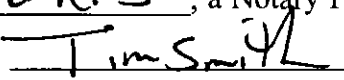
By: 

EXPERIENCEONE HOMES, LLC

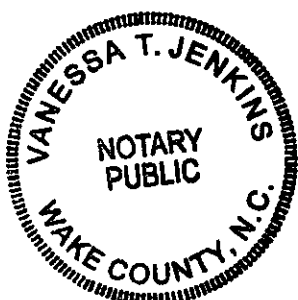
By: 

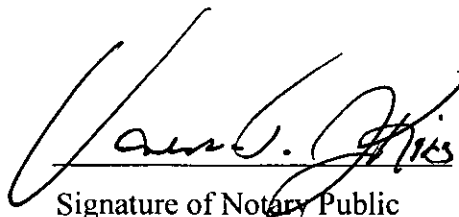
STATE OF NORTH CAROLINA

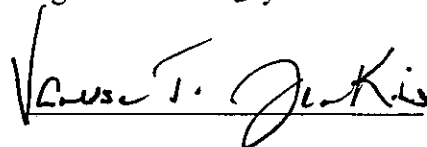
COUNTY OF Wake

I, , a Notary Public in and for said County and State, do hereby certify that  before me this day personally appeared, who being by me first duly sworn, says that he is a manager of KCR INVESTORS, LLC, the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

Date 9-27-07




Signature of Notary Public



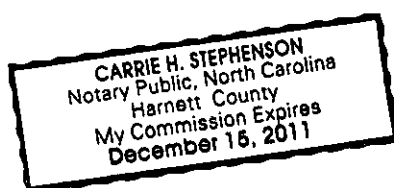
My commission expires: 1-27-2008

STATE OF NORTH CAROLINA
COUNTY OF Harnett

I, Carrie H. Stephenson, a Notary Public in and for said County and State, do hereby certify that L. W. Caldwell before me this day personally appeared, who being by me first duly sworn, says that he is a manager of EXPERIENCEONE HOMES, LLC, the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

Date 9/27/07

Carrie H. Stephenson
Signature of Notary Public



My commission expires: 12/15/11

BK012769PG01995

Exhibit A

BEING all of Lots 281 through 291, inclusive; 310 through 317, inclusive; and, 434 through 438, inclusive, KITTS CREEK SUBDIVISION, PHASE 1D (REVISED BUNGALOW LOTS), as shown on map recorded in Book of Maps 2007, Pages 2283, 2284 and 2285, Wake County Registry.



BOOK:012769 PAGE:01955 - 01996

**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**

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