

# **Berkshire Covenants & Restrictions - Phase II**

## **Table Of Contents**

**BACKGROUND STATEMENT**

**STATEMENT OF DECLARATION**

**ARTICLE I - DEFINITIONS**

**ARTICLE II - COMMON AREA**

**ARTICLE III - THE ASSOCIATION**

**ARTICLE IV - OPERATION OF THE PROPERTY AND ASSESSMENTS**

**ARTICLE V - INSURANCE AND RECONSTRUCTION**

**ARTICLE VI - MAINTENANCE OF PROPERTY**

**ARTICLE VII - ARCHITECTURAL CONTROL**

**ARTICLE VIII - EASEMENTS**

**ARTICLE IX - USE RESTRICTIONS**

**ARTICLE X - AMENDMENT OF DECLARATION**

**ARTICLE XI - TERMINATION**

**ARTICLE XII - MISCELLANEOUS PROVISIONS**

Return to: American Land Corporation-Charlotte, Inc. 8520 Cliff  
Cameron Drive, Suite 450, Charlotte, NC 28269

**STATE OF NORTH CAROLINA**

**COUNTY OF ROWAN**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR BERKSHIRE SUBDIVISION, PHASE II**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this “Declaration”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007 by **AMERICAN LAND CORPORATION-CHARLOTTE, INC.** (“Declarant”), a North Carolina corporation with offices in Charlotte, North Carolina.

**BACKGROUND STATEMENT**

Declarant is the owner of a parcel of real property containing approximately 162 acres of land, located in Rowan County, State of North Carolina (“Property”). The Property is more particularly shown on the subdivision plat for the Property (“Plat”) recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ and includes only lots \_\_\_\_\_ through \_\_\_\_\_, in the Rowan County, North Carolina Public Registry.

Declarant desires to develop a residential community, with certain common areas and facilities to be used for the benefit of the owners of Lots within the Property. Declarant desires to provide for the preservation of the values and amenities within the Property and for the maintenance of the common areas and facilities in the Property, and therefore desires to subject the Property to the covenants, restrictions, easements, charges and liens described in this Declaration, all for the benefit of the Property and each owner of any part of the Property.

Declarant has deemed it desirable to create a nonprofit, incorporated association which will be delegated and assigned powers of maintaining and administering the common areas and facilities of the Property, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the Lots and to promote the recreation, health, safety and welfare of the owners of the Lots within the Property. In order to accomplish the foregoing, Declarant is entering into this Declaration.

## STATEMENT OF DECLARATION

**NOW, THEREFORE**, Declarant hereby declares that all of the Property as shown on the Plat shall be held, transferred, sold, conveyed, occupied and used subject to the North Carolina Planned Community Act, codified in Chapter 47F of the North Carolina General Statutes (“Act”) and to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on, and inure to the benefit of, all parties having any right, title or interest in the Property or any part thereof, and the heirs, successors and assigns of all of the foregoing parties.

### ARTICLE I

#### DEFINITIONS

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit):

**Section 1.1** “Agency” shall mean and refer to any one of the following entities (or their successors) that holds or insures a Mortgage: the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Government National Mortgage Association.

**Section 1.2** “Association” shall mean and refer to Berkshire Hills Homeowners Association, a North Carolina non-profit corporation, organized pursuant to N.C.G.S. § 47F-3-101, and its successors and assigns.

**Section 1.3** “Board” shall mean and refer to the executive board of the Association.

**Section 1.4** “Bylaws” shall mean the bylaws adopted by the Association pursuant to the North Carolina Non-Profit Corporation Act, as they may be amended from time to time.

**Section 1.5** “Common Area” shall mean and refer to all real and personal property owned by the Association, including but not limited to the easements granted to the Association for the placement of signs at the entrance of the Property and the placement of street lights throughout the Property and the streets within the Property until such time as they are dedicated to public use, for the common use and enjoyment of the Owners and all facilities or improvements thereon.

**Section 1.6** “Declarant” shall mean and refer to American Land Corporation-Charlotte, Inc., a North Carolina corporation, and its successor or assigns.

**Section 1.7** “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

**Section 1.8** “Governing Documents” shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

**Section 1.9** “Lot” shall mean and refer to any numbered plot of land, with the exception of the Common Area, appearing on the Plat.

**Section 1.10** “Member” shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee or other legal entity that is a member of the Association as provided in **Article III, Section 3.1**.

**Section 1.11** “Mortgage” shall mean and refer to a mortgage or deed of trust constituting a first lien on a Lot.

**Section 1.12** “Mortgagee” shall mean and refer to an Institutional Lender holding a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Lot.

**Section 1.13** “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein) which is a part of the Property, but excluding those parties who have such interest merely as security for the performance of an obligation.

**Section 1.14** “Property” shall mean and refer to the real property shown on the Plat or such other land that the Declarant chooses to add to the property at his sole discretion and absolute right.

**Section 1.15** “Street Lights” shall mean and refer to the street lights on the Property that are leased from Duke Power Company.

## ARTICLE II

### COMMON AREA

**Section 2.1 Owners’ Easements of Enjoyment.** Every Owner shall have a non exclusive perpetual 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 terms of this **Section 2.1**.

All easements over the Common Area created by this **Section 2.1** shall be deemed appurtenant to each Lot, shall inure to the benefit of each Owner and his tenants, family members, guests, invitees and agents, and are granted subject to the provisions of this Declaration including, without limitation, the following conditions and reservations:

(a) The right of the Association, in accordance with the provisions of **Section 2.5** and the Governing Documents, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;

(c) The right of the Association, in accordance with the provisions of **Section 2.5** and the Governing Documents, to dedicate or transfer all or any part of the Common Area;

(d) The right of the Association to establish reasonable rules and regulations for the use of the Property by Members or their tenants, family members, guests, invitees and agents, as provided in **Article IX**.

**Section 2.2 Title to Common Area.** Declarant covenants for itself, its successors and assigns, that it shall convey fee simple title to the Common Area within the Property to the Association prior to or simultaneously with the date of recordation of the deed conveying the first Lot to an Owner other than Declarant and the making or insuring of any first mortgage by any Agency. Such conveyance by the Declarant shall be free and clear of all liens and encumbrances, except the rights, restrictions, and easements set forth in this Declaration, if any, other public and private access, utility and drainage easements, easements to governmental authorities, and ad valorem taxes for the year in which such conveyance occurs. Ad valorem taxes shall be prorated between the Declarant and the Association as of the date of conveyance and the Declarant will pay its prorata share to the Association which will pay the taxes when due.

**Section 2.3 Delegation of Use.** Any Owner may delegate, in accordance with the Governing Documents, his rights of enjoyment to the Common Area to members of his family, tenants or contract purchasers who reside on the Property, or to such other persons as may be permitted by the Association.

**Section 2.4 Maintenance of Common Area.** The Association shall be responsible for the maintenance and repair of the Common Area and all improvements located thereon, except for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

**Section 2.5 Conveyance of Common Area.** While the Property remains subject to this Declaration, no conveyances shall be made nor shall any security interest or lien of any nature arise or be created against the Common Area except as permitted under N.C.G.S. § 47F-3-112. For so long as the Declarant owns any Lot, agreement to any such action must be obtained from the Declarant and from Owners entitled to cast the statutorily required percentage, excluding and without consideration of any votes allocated to a Lot or Lots owned by the Declarant. So long as Declarant is a Class B Member in the Association, any dedication of all or any part of the Common Area to public use shall require the prior approval of any Agency holding or insuring a Mortgage. Any grant of a mortgage or security interest in the Common Area shall expressly be subject to the rights and easements created by this Declaration. Every agreement for the performance of labor or the furnishing of materials to the Common Area, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration "

### ARTICLE III

#### THE ASSOCIATION

**Section 3.1 Automatic Membership.** All Owners shall automatically be members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Governing Documents, including the obligation to pay assessments. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

**Section 3.2 Voting Rights.** There shall be three classes of Lots and Members with respect to voting rights in the Association:

(a) Class A Lots shall be all Lots in the Property except for Class B Lots, as defined below. The Owner (or group of Owners) of each Class A Lot shall be entitled to one (1) vote in the Association. If a Lot is owned by more than one person or entity as tenants in common or tenants by the entirety, then each such person or entity shall be deemed an Owner and a Member of the Association, but in no event shall more than one (1) vote in the Association be cast with respect to each Class A Lot, as is more particularly set forth in the Bylaws.

(b) Class B Lots shall be all Lots in the Property owned by Declarant. The Declarant shall be entitled to three (3) votes in the Association for each Class B Lot owned by it.

(c) Class C Lots shall be all Lots in the Property which are purchased by builders who intend to construct or begin to construct residential improvements thereon within one year of their purchase of the Lots. The Owner (or group of Owners) of each Class Lot shall be entitled to zero (0) votes in the Association for each Class C Lot.

**Section 3.3 Directors Appointed by Declarant.** The initial Board shall consist of not less than three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not be Members. Until these persons are replaced by elected Board members as provided in the Bylaws, they shall constitute the Board of the Association and exercise all powers and duties granted to the Board in the Bylaws.

## ARTICLE IV

### OPERATION OF THE PROPERTY AND ASSESSMENTS

**Section 4.1 Adoption of Budget; Creation of Lien and Personal Obligation for Assessments.** The Board shall, from time to time and at least annually, prepare and adopt a proposed budget for the Association, determine the amount of expenditures payable by the Owners to meet the proposed budget of the Association (“Common Expenses”) and allocate and assess Common Expenses among the Owners as provided in **Section 4.5**. The Common Expenses shall include such amounts as the Board deems necessary for the operation and maintenance of the Property and shall include, without limitation, amounts for purposes set forth in **Section 4.2**, amounts for permitted reserves and such amounts as may be necessary to make up any deficit for outstanding Common Expenses for any previous year. No proposed budget shall be effective until ratified as provided in N.C.G.S. § 47F-3-104(c).

Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges of the Association, and (2) special assessments of the Association as provided in **Section 4.4**, such assessments to be established and collected as hereinafter provided. Each annual and special assessment, together with interest, costs and reasonable attorneys’ fees, shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys’ fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them.

**Section 4.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Property to the fullest extent authority or responsibility is granted to the Association hereunder including, and without limiting the generality of the foregoing, for: the acquisition, improvement, maintenance and operation of the Property; services and facilities devoted to this purpose and related to the use and enjoyment of the Property, including but not limited to maintenance, landscaping and security services; payment of taxes and governmental assessments on the Common Area; payment of insurance premiums for the insurance policies maintained by the Association; payment of management fees to a property manager in accordance with **Section 4.14**; the employment of attorneys and accountants to represent the Association when appropriate; the enforcement of the covenants contained herein and the rules and regulations of the Association as may be promulgated pursuant to **Section 9.19**; the cost of utilities and fuel used in operating facilities in the Common Area; the rental of the street lights in the Property; and the maintenance and upkeep of all private streets and roadways in the Property. Assessments may also be levied and collected to establish reserve funds as the Board, in its discretion, deems reasonable and appropriate from time to time for road repair, painting, maintenance or landscaping.

**Section 4.3 Maximum Annual Assessment.** Until January 1, 2007, the maximum annual assessment for each Class A Lot (the "Assessment Cap") shall be Two Hundred Fifty Seven and 50/100 Dollars (\$257.50), except as otherwise provided below.

(a) From and after January 1, 2007, the Assessment Cap may be increased or decreased by the Board, without a vote of the membership, so long as the amount of the increase does not exceed ten percent (10%) per annum, calculated on a cumulative basis.

(b) From and after January 1, 2007, the Assessment Cap may be increased above the increase allowed in **Section 4.3(a)** by a vote of two-thirds (2/3) of the votes appurtenant to all Lots who are voting in person or by proxy, at a meeting duly called for this purpose at which a quorum is present.

(c) The Board shall fix the annual assessment for each assessment year at an amount not in excess of the Assessment Cap for that year. "

**Section 4.4 Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part: (a) the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including but not limited to fixtures and personal property related thereto; (b) the cost of paying special governmental assessments; or (c) any other cost or expense, payment of which through special assessment is approved by two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present. There shall be no limit on the amount of any such special assessments.

**Section 4.5 Uniform Rate of Assessment.** Both annual and special assessments levied by the Association must be fixed at a uniform rate for each Lot. Notwithstanding the foregoing, the rate of assessment for any Lot owned by the Class B Member shall be twenty-five percent (25%) of the rate for Lots owned by Class A Members. "

**Section 4.6 Date of Commencement of Annual Assessments: Due Dates.** The annual assessments levied by the Association shall commence as to each Lot upon the recordation of this Declaration in the Rowan County, North Carolina Public Registry. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board 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 dates shall be established by the Board and, unless otherwise determined by the Board, annual assessments shall be collected semi-annually with one half (1/2) of the annual assessment due and payable on the first day of April and the first day of October each year, subject to acceleration as provided in **Section 4.7**.

**Section 4.7 Effect of Nonpayment of Assessments: Remedies of the Association.** If any annual or special assessment, or monthly installment thereof, is not paid within thirty (30) days after its due date, the Board may, at its option and without further notice, declare the entire unpaid assessment, both annual and special, immediately due and payable. Unpaid assessments shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In addition, the Association shall be entitled to recover fees and penalties for returned checks as permitted in N.C.G.S. § 6-21.3 and N.C.G.S. § 25-3-506. The Association may enforce assessment obligations as permitted by law, including, without limitation, by filing and foreclosing a claim of lien in accordance with the procedures set forth in N.C.G.S. §47F-3-116, and/or by bringing an action at law against the Owner personally obligated to pay the assessment or foreclose the lien against his Lot to collect said assessment. In addition, interest, late charges and reasonable attorneys' fees and costs of such action or foreclosure shall be

added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Foreclosure may be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust would be brought under Chapter 45 of the North Carolina General Statutes, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. 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.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Area or any other services or facilities which is provided by the Association (except the right of access to the Owner's Lot and the right of access to utility service for such Lot) may be suspended by the Association until such assessment is paid as provided under N.C.G.S. § 47F-3-102(11). In the event of violation by an Owner of any rules or regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board after a hearing for a period not to exceed sixty (60) days. Such hearing shall only be held by the Board after giving such Owner ten (10) days' prior written notice specifying each alleged violation and setting the time, place and date of the hearing; determination of the violation and the time of suspension shall be made by a majority vote of the Board.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the Board may notify the owner and holder of any mortgage or deed of trust of a delinquency relating to the Lot encumbered by that mortgage or deed of trust.

**Section 4.8 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage on any Lot, and shall be subordinate to any tax lien or special assessment on a Lot made by lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot by foreclosure of any Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Lot acquired as a result of foreclosure of the Mortgage, his heirs, successors and assigns. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. "

**Section 4.9 Exempt Property.** The following parts of the Property shall be exempt from assessment liens of the Association: (a) the Common Area; and (b) any part of the Property dedicated to and accepted by a local public authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Property to any public authority).

**Section 4.10 No Obligation to Provide Funds.** Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on Lots which Declarant may from time to time own. Declarant may, at its discretion, lend funds to the Association from time to time as required, which loans shall be repayable with interest at a rate no higher than the prime rate of interest charged by Bank of America, and with a maturity date no more than one (1) year from the date of advancement of funds. "

**Section 4.11 Reserve Funds.** From and after the recording of this Declaration, the Association may establish and maintain a reserve fund or funds as permitted in **Section 4.2** hereof. In that event, the Association shall allocate revenues from assessments to such reserve fund or funds in such amounts and in

such manner as may be established from time to time by the Board in its discretion. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. Reserve funds established may only be used for the purpose designated unless reallocation is approved by the membership of the Association. "

**Section 4.12 Association to Maintain Books and Records.** The Association shall maintain at all times current copies of all Governing Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements as required by N.C.G.S. § 47F-3-118(a). Books and records shall be available as provided in the Bylaws.

**Section 4.13 Voluntary Conveyance; Estoppels.** Except as provided in **Section 4.8**, the lien for assessments of the Association created in this **Article IV** shall not be affected by any conveyance of a Lot, and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed as provided in **Section 4.7**. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board pursuant to N.C.G.S. § 47F-3-118(b), setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

**Section 4.14 Management and Other Agreements.** The Association shall have the right to enter into management and other agreements for the Property with any individual, firm or entity that the Association deems appropriate and in the best interest of the Property. A copy of all such agreements shall be made available to each Owner and Mortgagee upon request. Any management and agreements for the ongoing provision of goods or services entered into by the Association shall provide that it may be canceled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. Should the Association enter into a management agreement for the Property as permitted herein, the manager shall obtain and at all times maintain Fidelity Insurance as provided in Section 5.1(c) of this Declaration.

## ARTICLE V

### INSURANCE AND RECONSTRUCTION

**Section 5.1 Association Insurance.** The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) **Property Insurance.** The Association shall obtain and maintain at all times a policy or policies of property insurance (ISO special form or its equivalent) covering all improvements located in the Common Area and the street lights leased from Duke Power in an amount not less than one hundred percent (100%) of the replacement cost of such improvements at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of excavation, paving, foundations and footings, with a commercially reasonable deductible not in excess of \$10,000.00. Each policy shall show the Association as the named insured with respect to the Common Area. Each policy shall contain an inflation guard endorsement and a construction code endorsement, if available.

(b) **Liability Insurance.** The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Area; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall

include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and all Mortgagees. The Association shall review such limits annually.

(c) Fidelity Insurance. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Association, but in no event less than one-half the annual budgeted amount of annual assessments.

(d) Other Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as may be required by any Agency (as same may be amended or modified from time to time), and such other insurance coverages as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds.

(e) Insurance Unavailable. In the event the insurance described in Subsections (a) through (c) is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners. For purposes of this subsection, insurance will be deemed "not reasonably available" if the cost of that insurance is prohibitive in light of the Association's budget and available resources. In the event the Association determines any such insurance to be "not reasonably available," it shall take reasonable steps to obtain insurance for the benefit of the Association which is as closely equivalent to the insurance coverage required in Subsections (a) through (c) that is reasonably available.

**Section 5.2 Premiums**. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a expense of the Association for all purposes. All such premiums shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies.

**Section 5.3 General Standards**. All insurance policies maintained by the Association under this **Article V** shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in *Best's Insurance Guide*, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in *Best's Insurance Guide*. Upon written request, duplicate originals of all such policies shall be furnished to all Owners and Mortgagees, provided that in lieu of such duplicate original policies the Association may deliver certificates to the Owners and the Mortgagees attesting the fact that such policies and such insurance are in force and effect. The Association also shall furnish to all Owners and Mortgagees, upon written request, evidence that premiums for the required insurance have been paid on an annual basis.

**Section 5.4 Distribution of Insurance Proceeds**. All policies of property insurance procured by the Association shall provide that all losses shall be adjusted with, and all proceeds shall be payable to, the Association as insurance trustee as provided in N.C.G.S. § 47F-3-113(d). The Association shall have exclusive authority to negotiate any and all losses under such insurance policies. Subject to the provisions of N.C.G.S. § 47F-3-113(g), the sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to apply those proceeds to repair or restore the damaged property as provided in **Sections 5.5 and 5.6**.

**Section 5.5 Responsibility for Reconstruction or Repair.** If any portion of the Common Area is damaged by perils covered by the property insurance maintained by the Association in accordance with **Section 5.1(a)**, the Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Common Area as provided in N.C.G.S. § 47F-3-113(g).

If repair and reconstruction is required under N.C.G.S. § 47F-3-113(g), and if: (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Common Area by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Common Area shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association.

**Section 5.6 Procedure for Reconstruction or Repair.** In the event of a casualty causing damage to any portion of the Common Area, the following provisions shall govern and apply:

(a) Immediately after a casualty which causes damage to any portion of the Common Area, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(b) If the proceeds of the Common Area insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more special assessments shall be made against all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to the Common Area or the improvements thereon) in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of two-thirds (2/3) of the members of the Association voting at a meeting duly called for such purpose at which a quorum is present.

(c) The proceeds of the property insurance referred to in **Section 5.1(a)** and the sums deposited with the Association from collections of special assessments proceeds of authorized loans, as provided in **Section 5.6(b)**, shall constitute a construction fund which shall be held by the Association and applied to the payment of the cost of reconstruction and repair of the Common Area from time to time as the work progresses, but not more frequently than once in any calendar month. The Association shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by an architect in charge of the work who shall be selected by the Association, certifying that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and certifying that the sum requested does not exceed the value of the services and materials described in the certificate. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board. "

## ARTICLE VI

### MAINTENANCE OF PROPERTY

**Section 6.1 Maintenance by Association.** The Association shall be responsible for the operation, maintenance and repair of the Common Area, as provided in **Section 2.4**.

**Section 6.2 Maintenance by Owners.** Each Owner of a Lot shall keep the Lot owned by him, and all improvements thereon, in a clean and sanitary condition and in good order and repair. All fixtures and equipment installed within a Lot, shall be maintained and kept in repair by the Owner thereof. If an Owner of any Lot fails to maintain that Lot and the improvements thereon in accordance with this **Article VI** in a manner reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within twenty (20) days, the Association shall have the right, through its agents, contractors, and employees, to enter upon the Lot of the defaulting Owner and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with **Section 4.7**. In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot to make emergency repairs necessary for the proper maintenance and operation of the Property.

## ARTICLE VII

### ARCHITECTURAL CONTROL

**Section 7.1 Building Restrictions.** All buildings and structures must be approved in writing by the Association prior to construction. The Association shall have both sole and final authority to approve or disapprove the construction of any home on the Property. However, at no time shall the Association have the right or the ability to regulate lots that are owned by the Declarant, even after they have "sold out" of the subdivision, and the Association shall not have the power to impose restrictions, rules, or limitations on the Declarant. It is the desire and the intention of the Declarant to require a minimum limit of the quality and design of the homes to be placed within the Property to have an appraisal value of at least \$180,000 for the home, land, and all improvements.

- (a) Only one (1) single-family multi-story house not exceeding two and one-half stories in height shall be constructed on any Lot. Only multi-story houses with a minimum of 2,200 square feet of heated floor space will be permitted on a Lot as defined below.
- (b) Any residence of more than one story erected on a Lot must have at least 1,200 square feet of ground floor area exclusive of open porches and garages and must have at least 2,200 square feet of total heated floor space exclusive of open porches and garages.
- (c) Any single-story, single-family residence erected on a Lot must have a ground floor area, excluding finished basements, of at least 2,000 square feet of heated floor space exclusive of open porches and garages. However, Lot 72 shall be excepted from this requirement and be allowed to have a, single-family residence, excluding finished basement, of at least 1800 square feet of heated floor space exclusive of open porches and garages.

- (d) No single wide, double wide, or modular home shall be allowed or permitted on any Lot or any street within the Property.
- (e) All homes must have at least 25% of the front façade of the house covered in brick or stone. This 25% shall be exclusive of foundation or slab decoration.
- (f) No home within Berkshire Phase I shall have a front load garage. Placement of homes and garage doors on corner lots shall require the written approval of the declarant.
- (g) Each house constructed or erected on any Lot within the Property must comply with the following restrictions:
  - (i.) Must be underpinned with or placed on brick, masonry block, or concrete.
  - (ii.) Shall have a minimum 5/12 roof pitch.
  - (iii.) Must have a roof with at least a six inch (6") overhang, exclusive of gutters.
  - (iv.) Shall have an installed walk way from the driveway to the front door of the residence which is constructed with the same material as the driveway. Any variation of this restriction or materials used must be approved in writing by the Declarant.
- (h) No residence, garage or accessory structure shall be located on any lot nearer to the right-of-way of any street within the Property than the setback lines as shown on said recorded Plat.
- (i) All construction, landscaping or other work which has been commenced on any lot located within the property must be continued with reasonable diligence to completion and no partially completed houses or other improvements shall be permitted to exist on any lot, except during such reasonable time period as is necessary for completion. Maximum construction duration shall be no longer than twelve (12) consecutive months from the placement of footings to time of owner occupancy, unless approved by the Declarant or Association in writing.

Notwithstanding the foregoing, the Declarant may vary the foregoing dimensions by up to 10% upon the recordation of a written instrument with the Rowan County Public Registry setting forth the permitted variance. No structures or enclosures of a temporary character (such as a trailer or tent), nor any shack, barn, animal pen, shed or other detached outbuilding shall be constructed or used on any portion of the Property at any time without the prior written approval of the Association. All buildings, structures and enclosures of any type shall be of new construction with new materials and must be approved in writing by the Declarant or the Association prior to construction.

## **Section 7.2 Additions or Improvements**

No fence, wall or other structure or improvement of any type shall be constructed, erected, maintained on, or removed from, the Property until plans and specifications for such work have been approved by the Board as provided below. The plans and specifications shall show the nature, kind, shape, height, materials and location of the proposed improvements or alterations. The Board shall review and approve the plans as to harmony of external design, color and location in relation to surrounding structures and topography. The Board shall have the right to charge a reasonable fee, not to exceed \$100.00, for reviewing each such application. If the Board or its designated committee fails to approve, approve as noted or as qualified, or disapprove such plans and specifications submitted to it in accordance herewith within sixty (60) days, the approval required in this **Section 7.2** shall be deemed granted and no further approvals or consent shall be

required before the commencement of construction on such improvements; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data, misstatements, or in any way fail to present accurate or adequate information upon which Board or its designated committees can base a decision. The Owner shall obtain all required permits and inspections for any Additions or Improvements approved and shall provide evidence of the same to the Board upon request.

**Section 7.3 Alterations.** No Owner shall make alterations or exterior modifications to the improvements on his Lot or to any of the Common Area, including but not limited to a change in exterior paint colors, the erection of awnings, the installation of storm doors, storm windows, or window screens, or the decoration of porches or balconies facing the street, without the written approval of the Board. The Board shall not approve any alterations, decorations or modifications which, as determined by the Board in its reasonable judgment, would jeopardize or impair the soundness, safety or appearance of the Property. Further, without the prior written approval of the Board, no Owner shall install or use any window treatment (blinds, draperies or the like) visible from the exterior of his home unless the portion thereof visible from the exterior is white, off-white or such other neutral colors as may from time to time be approved by the Board.

**Section 7.4 Antennas.** No exterior satellite dish in excess of one (1) meter in diameter may be placed on the exterior of any Lot or in the Common Area without the prior written approval of the Board. The location of any exterior television antennas and satellite dishes less than one (1) meter in diameter shall be subject to the reasonable prior approval of the Board, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Board may require that such antennas or dishes be screened from public view.

**Section 7.5 Inspection.** The Board or its designated committee shall have the right, at its election, to enter upon any Lot during construction, erection, or installation of improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

**Section 7.6 Excavation.** No Owner of a Lot, other than the Declarant, shall excavate or extract earth from any Lot for any reason other than repair or maintenance reasons and only with the prior written approval of the Declarant or the Association

## ARTICLE VIII

### EASEMENTS

**Section 8.1 Access by the Association.** The Association, or any person authorized by it, shall have the right of access to each Lot to the extent necessary for performance by the Association or the Declarant of its obligations of maintenance, repair, or replacement of the Common Area.

**Section 8.2 Blanket Easements for Utilities.** Declarant, prior to the conveyance of the Common Area to the Association, and the Association, at any time thereafter, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Area. Further, the Association may grant such permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful in the discretion of the Board for the purpose of maintenance and operation of the Project. Notwithstanding the foregoing, no sewer lines,

electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially approved by Declarant or thereafter approved by Declarant or the Board.

**Section 8.3 Easement for Construction Purposes.** Declarant shall have full rights of ingress and egress to and through, over and about the Property during such period of time as Declarant is engaged in any construction or improvement work on or within the Property. Declarant further has an easement for the purpose of the storage of materials, vehicles, tools, and equipment which are being utilized in such construction. No Owner, or his guests or invitees, shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction. No Owner shall have any claims or cause of action against Declarant for any matter arising out of the exercise or non-exercise of any easement or other right reserved or referred to herein.

**Section 8.4 Right of Access.** Every Owner grants a right of access to his Lot to the Independent Manager and/or any other person authorized by the Board or the Independent Manager for the purpose of making inspection of or for the purpose of correcting any condition originating on his Lot and threatening another Lot or the Common Area. "

## ARTICLE IX

### USE RESTRICTIONS

**Section 9.1 Residential Use Only.** Each Owner shall use his Lot for residential purposes only, and shall not permit his Lot to be used in any unlawful manner. To the extent permitted by law, any Owner may use his Lot as a home office, provided that such home office use (a) is ancillary to the residential use, (b) does not generate any additional pedestrian or vehicular traffic to or from his Lot or the Common Area, and (c) does not cause any disturbance of other residents or occupants of the Property. Notwithstanding the foregoing, Declarant shall have the right to use any portion of the Property as a sales office, construction office, storage area, model home, or similar facility in connection with its development of the Property and shall, as long as it owns Lots 1 Through 94 and/or any easements thereon, have the right to use said lot(s) or land for commercial and utility purposes as long as such use is for the general use of the public.

**Section 9.2 Care and Maintenance.** Each Owner shall (a) keep the exterior of the Lot in a safe, neat and clean condition at all times; (b) permit no unsafe or unsanitary conditions on his Lot; (c) comply with any and all obligations imposed upon Owners by applicable building and housing codes; and (d) not deliberately or negligently destroy, deface, damage or remove any part of any Lot or the Common Areas, or knowingly permit any person to do so. If an Owner fails to comply with the standards or requirements of the Association relative to maintenance after written notice to do so, the Association shall have the right to undertake the necessary maintenance or repairs at the expense of the defaulting Owner, as provided in **Section 6.2.**

**Section 9.3 Offensive Activity.** No noxious or offensive trade or activity or illegal activity shall be conducted upon any Lot, or in the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner, or which may endanger the health or safety of any other Owner of the Property.

**Section 9.4 Noise and Disorderly Conduct.** No Owner shall engage in any disorderly conduct on the Property, or cause or allow any disturbance, including, but not limited to, shouting, singing, or playing any musical instruments, radio, stereo, or television, in a manner that unreasonably disturbs any other Owner of the Property.

**Section 9.5 Fire Hazards.** No Owner shall make any alterations to his Lot or bring or keep anything therein which will increase the risk of fire, conflict with fire laws or the regulations of the Rowan County

Fire Department, or increase the premiums of any insurance policy on the Property maintained by the Association.

**Section 9.6 Rubbish.** All rubbish, trash, garbage, junk, and other waste shall be kept temporarily in sanitary containers within each Lot, and removed from the Lot at least weekly. All trash containers, incinerators and other equipment for storage or disposal of such waste shall be kept in a clean, odor free and sanitary condition and shall be located so as to be concealed from public view.

**Section 9.7 Wells and Septic Tank.** Each lot shall be equipped with an approved sanitary septic tank system located and constructed in accordance with the requirements, standards and recommendations of the Rowan County Health Department. Outside privies are expressly forbidden, except during construction. The Declarant reserves the right to determine water well placement on any Lot so as to assure septic and well placements are available to all Lots. Well placement will be reviewed as part of the Initial Architectural Review.

**Section 9.8 Animals.** No animals, livestock or poultry of any kind shall be kept, bred or maintained on any Lot except for dogs, cats or other household pets. No more than two (2) dogs shall be allowed per Lot. No pets may be kept or bred for any commercial purposes. No savage or dangerous pets, as determined by the Board, in its sole discretion, may be kept on the Property. All permitted pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. All pets must be housed inside a Lot, and no pet shall be permitted upon the Common Area unless carried or leashed by a person that can control the pet. Pets shall not be permitted to defecate in the Common Area, or urinate on the shrubbery, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each owner shall indemnify and hold the Association harmless from any claim or costs, including reasonable attorney's fees, resulting from any action of his pet, and shall repair at his expense any damage to the Property caused by his pet. Notwithstanding the foregoing, an Owner of any Lot containing 2.75 or more acres of land may, subject to city or county ordinance, be permitted to keep a maximum of two horses. Any dog run or animal pen or shelter must be shielded from view from a neighboring lot or a neighboring road.

**Section 9.9 Concrete Blocks.** No building, enclosure or structure of any type shall be erected or maintained on any Lot which has concrete blocks exposed on the exterior thereof.

**Section 9.10. Signs.** No sign of any kind shall be displayed on any Lot except for sign(s) used to advertise the sale of the property, or approved in writing by the Association. The Association shall have the power, but not the obligation, to adopt and issue from time to time sign guidelines, as part of the Guidelines, to assist the Association in reviewing and approving proposed signs to be erected on the Property. Provided, however, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, the Development or portions of either thereof, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas.

**Section 9.11 Fences.** No fence, wall, patio enclosure, hedge, garden or mass planting shall be erected, maintained or permitted upon the Property, other than those expressly approved by the Association in accordance with **Section 7.2**, or those installed by Declarant prior to the initial conveyance of each Lot.

**Section 9.12 Clotheslines.** No clothesline or clothes drying structure or equipment of any type shall be placed, used or allowed to remain on any Lot without the written permission of the Declarant or the Association which may be revoked at any time, with or without cause.

**Section 9.13 Storage Tanks.** No storage tanks shall be erected or placed on any Lot above ground unless it is sealed from view with a structure constructed of the same materials of which the residence on the Lot is constructed. All storage tanks must comply with local, state and federal rules and regulations.

**Section 9.14 Use of Common Area in General.** No Owner shall obstruct the entrances and other facilities in the Common Area in any way, or use them for other than their intended purposes. No supplies, personal property or trash or refuse of any kind may be placed, kept or stored on the Common Area. There shall be no property left in the Common Area at any time. In general, no activity shall be carried on nor conditions maintained by any Owner either on his Lot or upon the Common Area which despoils the appearance of the Property.

**Section 9.15 Vehicles.** No boats, motor homes, trailers, campers, mobile homes, trucks (except pickup trucks used for personal transportation), commercial trucks of any size, vehicles in excess of twenty five (25) feet in length or motorized vans used for commercial purposes (as distinguished from vans used solely as passenger vehicles), tractors, trailers, dump trucks, vehicles exceeding 10,000 pounds in weight, wrecked vehicles, inoperable vehicles or any vehicle not regularly operated in day to day use shall be driven upon or parked on the Property at any time without the written consent of the Declarant or the Association, which may be revoked at any time, with or without cause. All vehicles shall at all times have a current license and inspection sticker. No significant automobile repair shall be allowed on the Property. The Association shall have the right to tow any vehicle in violation of this paragraph at its owner's expense. No unregistered motor vehicles, mopeds, three-wheel motor bikes, or similar motorized vehicles shall be operated within the right of way of the streets and roads of the subdivision, neither on the paved portion of the roadway nor on the shoulders of the roadway. No motor homes, travel trailers, construction equipment or any construction materials, other recreational vehicles, school buses, vans, or large trucks may be parked or stored within the right of way of the streets and roads of the subdivision, neither on the paved portion of the roadway nor on the shoulders of the roadway.

**Section 9.16 Parking.** Parking of permitted vehicles shall be on the driveways of Lots. No vehicle shall be parked on a street nor on any unpaved portion of a Lot. The Association shall have the right to tow any vehicle in violation of this paragraph at its owner's expense. Garage doors on Lots shall be kept closed at all times except during times of ingress and egress from the garage.

**Section 9.17 Mailboxes and Driveways.** All mailboxes, driveways, and driveway pipes shall be installed and constructed in accordance with those standards established by the North Carolina Department of Transportation for secondary residential streets.

A. After the construction of a house, the mailbox and newspaper box designated by Declarant shall be erected or maintained on each Lot. No other receptacle shall be permitted without the written consent of the Declarant.

B. Mailbox shall be installed so that the mail box door is six inches (6") from the edge of the asphalt, so as to prevent the mail carrier from driving off asphalt during mail delivery.

C. All driveways shall be constructed of concrete. However, driveways longer than 200 feet may be constructed of asphalt with the written approval of the declarants.

D. In the construction of the driveway, any culvert to be installed to cross any ditch in the D.O.T. right of way must be constructed of corrugated metal pipe which diameter must be approved in writing by the declarants. In no circumstance during the construction of the driveway or placement of the culvert shall anyone cut or remove any matting which has been placed in the ditches. If driveway or culvert and installed without the written consent of the Declarant, or installed not in compliance with D.O.T. standards, the Declarant shall maintain the right to correct the improvements at the sole cost of the owner of the lot.

**Section 9.18 Timber Harvesting.** No timber shall be harvested from any Lot without the prior written approval of the Association.

**Section 9.19 Rules and Regulations.** In addition to the restrictions set forth in this **Article IX**, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Board. After the Class B Membership terminates, rules and regulations made by the Board and all amendments thereto shall not be effective unless and until they are approved by a vote of the Membership. Copies of all such regulations and amendments thereto shall be published prior to their effective date, and shall be furnished by the Association to Members upon request.

**Section 9.20 Enforcement.** The Association or its agent shall have the right to enforce the provisions of this **Article IX**, including Rules and Regulations adopted pursuant to **Section 9.19** in any manner permitted by law, including, without limitation, by seeking injunctive relief and/or the imposition of fines or other sanctions permitted by N.C.G.S. § 47F-3-102(12) and reasonable attorney's fees may be recovered as permitted by N.C.G.S. § 47F-3-120. No delay or failure to invoke an available remedy with regard to the violation of any provision contained herein or any rule or regulation shall be held to be a waiver by the Association of any right or remedy available to it upon the recurrence or continuance of said violation or the occurrence of any other violation. "

## ARTICLE X

### AMENDMENT OF DECLARATION

**Section 10.1 General.** Except as is otherwise specifically authorized herein, this Declaration may be amended only as provided in N.C.G.S. § 47F-2-117. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Office of the Register of Deeds of Rowan County, North Carolina. So long as Declarant is a Class B Member of the Association, any amendment of this Declaration (except as expressly provided in **Sections 10.2 and 10.3**) shall require the prior approval of any Agency holding or insuring a Mortgage.

**Section 10.2 Amendment of Declaration Without Approval of Owners.** So long as it owns any portion of the Property, the Declarant, without the consent or approval of any other Owner, 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 or insured by an Agency, or to comply with the requirements of law or regulations of any Agency regarding the purchase or sale of such Lots and improvements or mortgage interests therein. A letter from an official of any such Agency, including, without limitation, the Veterans Administration, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such Agency shall be sufficient evidence of the approval of such Agency, provided that the changes made substantially conform to such request or suggestion. Such amendment shall become effective upon the date of its recordation in the Office of the Register of Deeds of Rowan County, North Carolina.

**Section 10.3 Amendment to Achieve Tax-Exempt Status.** The Declarant, for so long as it is a Class B Member of the Association, and, thereafter, the Board, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Office of the Register of Deeds of Rowan County, North Carolina. "

## ARTICLE XI

### TERMINATION

This Declaration may be terminated only as set forth in N.C.G.S. § 47F-2-118. Notwithstanding the foregoing, so long as Declarant is a Class B Member of the Association, any termination of this Declaration shall require the prior approval of any Agency holding or insuring a Mortgage.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

**Section 12.1 Covenants Running with the Land.** Each Owner, by the acceptance of a deed of conveyance for a Lot, accepts title to that Lot subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed, shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance. These covenants shall so run with the land and shall be so binding for a period of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by sixty-seven percent of the owners of the Lots is recorded in the Rowan County, North Carolina Public Registry modifying the Declaration in whole or in part.

**Section 12.2 Waiver.** No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur. There shall be no waiver of strict compliance with the provisions of the Governing Documents except expressly and in a writing signed by the waiving party.

**Section 12.3 Severability.** The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

**Section 12.4 Time Limits.** If any of the privileges, covenants, restrictions or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until the expiration of ninety (90) years from the date of recordation of this Declaration. "

**Section 12.5 No Liability.** Neither Declarant, nor any subsidiary of Declarant, nor any employee, agent, successor or assign of Declarant or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of any actions performed pursuant to or in accordance with any authority granted or delegated to them by this Declaration.

**Section 12.6 Headings.** The heading to each Article and Section of this Declaration is inserted only as a matter of convenience for reference and in no way limits or describes the scope or intent of such Article or Section, or this Declaration in general.

**Section 12.7 Construction Deposit.** Prior to the start of Construction on any home within Berkshire Phase II, the Property Owner or the Property Owners builder shall be required to make a deposit with the Berkshire Hills Home Owners Association in the amount of \$2,500.00 to insure that any damage done by the builder or lot owner during construction shall be repaired by the owner or builder to the satisfaction of the Association. Uses for the deposit shall include, but not be limited to, fixing any damage to the asphalt roads

or grassed shoulders and ditches within the Subdivision. Prior to the Association using any of the deposit to correct damage, the owner shall be given seven days to correct the damage. If after seven days, the owner does not correct the damage, the Association shall have the right to use the property owners deposit to correct the damage. If the amount of damage is in excess of the \$2,500.00 deposit, the Association shall have the right to invoice the property owner for any excess amounts. In addition to this, the property owner will also be responsible for re depositing a \$2,500.00 deposit with the Association for any future damage.

IN WITNESS WHEREOF, Declarant has executed this Declaration under seal as of the day and year first above written.

**DECLARANT:**

AMERICAN LAND CORPORATION-CHARLOTTE,  
INC.

By: \_\_\_\_\_  
Gary Choquette, President

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

This \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally came before me Gary Choquette who, being by me duly sworn, says that he is President of **AMERICAN LAND CORPORATION-CHARLOTTE, INC.**, a North Carolina corporation, and that said writing was signed and sealed by him, in his capacity as a President of the corporation, by its authority duly given.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]