

BRANDYWINE HOMEOWNERS ASSOCIATION

ARCHITECTURAL AND USE STANDARDS

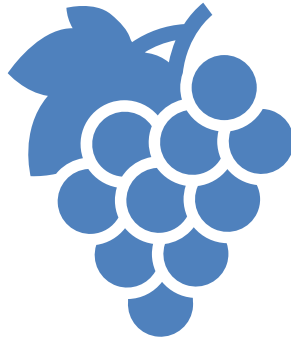


Table of Contents

1	INTRODUCTION	4
1.1	PURPOSE	4
1.1.1	Owners	5
1.1.2	Board of Directors.....	5
1.1.3	Appeals	5
2	ARCHITECTURAL CONTROL.....	6
2.1	Submitting a Request	6
2.2	Application for Architectural/Landscaping Review	7
2.3	Review Criteria	7
2.3.1	Validity of Concept.....	8
2.3.2	Protection of Neighborhood Interest.....	8
2.3.3	Design Compatibility	8
3	ARCHITECTURAL STANDARDS.....	9
3.1	Additions.....	9
3.2	Painting Your House.....	9
3.3	Decks.....	9
3.3.1	Materials.	9
3.3.2	Height.....	10
3.3.3	Location.	10
3.4	Deck Enclosures.....	10
3.5	Fences and Walls	11
3.6	Grading	12
3.7	Patios.....	12
3.8	Solar Collectors.....	12
3.9	Storage Buildings and Other Structures.....	12
3.10	Swimming Pools	13
3.11	Tree Removal.....	13
4	Use Standards and Restrictions.....	14

4.1	Antennas and Satellite Dishes.....	14
4.2	Clotheslines.....	14
4.3	Garbage and Garbage Receptacles.....	15
4.4	Garbage Can and Recycle Can Screening.....	15
4.5	Lawn and Exterior Maintenance.....	15
4.6	Play Equipment.....	16
4.7	Signs.....	16
4.8	Vehicle Parking.....	17
4.9	Parking Rules (Adopted on August 15, 2013).....	17
4.10	Vehicle Maintenance.....	18
4.11	Window Air Conditioners.....	19
5	Architecture and Use Standards Enforcement.....	19
5.1	Reporting Violations Homeowner Report of Suspected Violations.....	19
5.2	Property Management Company Report of Suspected Violations.....	19
5.3	Enforcement.....	19
5.3.1	Friendly Reminder.....	20
5.3.2	Official Notification.....	20
5.3.3	Homeowner Hearing.....	20
5.3.4	Final Actions.....	21
6	Amending Architecture and Use Standards and Processes.....	22
7	Appendices.....	23
7.1	APPENDIX A. DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, EASEMENTS, CHARGES AND LIENS.....	24
7.2	APPENDIX B. RESTRICTIVE COVENANTS FOR BRANDYWINE SUBDIVISION.....	47
7.3	APPENDIX C. NEIGHBORHOOD PLAT MAPS.....	55
7.4	APPENDIX D. APPLICATION FOR ARCHITECTURAL/LANDSCAPING REVIEW.....	60

1 INTRODUCTION

1.1 PURPOSE

The Declaration of Covenants, Conditions, and Restrictions, Easements, Charges and Liens (hereafter the Declaration) and Restrictive Covenants for Brandywine Neighborhood (hereafter the Covenants) exist to maintain the beauty of the subdivision and thereby preserve, protect and maintain the overall value of our community and each Owner's investment in it. The Architectural and Use Standards (hereafter the Standards) also help accomplish this goal by providing guidance for acceptable use of properties within Brandywine.

The Brandywine Homeowners Association (BHOA) is established to administer the Declarations and the Covenants, which is managed by an owner elected Board of Directors. The BOD provides this document to further define and clarify the standards for exterior architecture, landscaping changes, and use of the properties within Brandywine. These Standards serve to supplement the Declaration and the Covenants in order to assist homeowners in complying with them. Many of the topics addressed in the Declaration and Covenants as well as the Standards are subject to Town of Cary requirements. Homeowners are encouraged to review the Town of Cary requirements as well as the applicable Covenants and the Architecture and Use Standards.

The Declaration, the Covenants, the Standards, and other BHOA information can be found on the Brandywine Homeowners Association section of the CASNC website (www.casnc.com).

This Architecture and Use Standards was ratified and approved by the Brandywine Homeowners Association Board of Directors on **September 6, 2020**. This replaces any prior publication of Architectural Standards.

AUTHORITY

The Declarations and the Covenants provide the legal basis for this document. The Brandywine Homeowners Association Board of Directors is authorized to represent all Owners in these matters. The reader is referred to the highlighted sections of Appendix A, "The Declaration", and Appendix B, "The Covenants" in order to review the relevant portions supporting these guidelines.

RESPONSIBILITIES

As explained in the following sections, all the Owners in Brandywine have a role to play in attaining the goals set forth in the Declarations, the Covenants, and this document.

1.1.1 Owners

Each Owner is responsible for adherence to the Declarations, Covenants, and Standards and the decisions made by the Board of Directors on issues concerning the same. Owners should also encourage other Owners to abide by them as well. If necessary, Owners can report unresolved incidents of non-compliance using the process described in Section 5.1 of this document. Owners must complete and submit an “[Application for Architectural/Landscaping Review](#)” to the BOD in accordance with the process described in Section 2.2 of this document. No changes to owner property should be made until the “[Application for Architectural/Landscaping Review](#)” has been approved.

1.1.2 Board of Directors

The Board of Directors (the BOD), and/or BOD appointed Architectural Committee, administers the Declarations, Covenants, and Standards and is responsible for the following tasks:

- Review all submitted Applications for Architectural/Landscaping Reviews for conformance with the BHOA Declarations, Covenants, and Standards;
- Assist owners with questions regarding the request process and conformance to the Declarations, Covenants, and Standards;
- Evaluate the requests based on the criteria in this document;
- Record their decision within thirty (30) calendar days of the BOD’s receipt of a completed request; and
- Inspect the completed projects for conformance to the approved plan.

Note: If the request is incomplete and requires additional information, the thirty (30) day period will not start until the request is complete and accepted by the BOD.

The BOD’s objective is to preserve a community that is aesthetically pleasing and functionally convenient by maintaining a harmonious relationship among structures, vegetation, topography, and the overall design theme of the subdivision. Most importantly, the BOD’s decisions will attempt to maintain, protect and increase the value of all the homes and lots within Brandywine.

1.1.3 Appeals

Homeowners may appeal any denial to a properly submitted [Application for Architectural/Landscaping Review](#) by emailing the BOD President and the CASNC manager with one or more of the following:

- A logical argument that is supported by the Declarations and the Covenants in force
- A legal argument that is supported by NC case law and legal precedent
- An argument that demonstrates how an approval increases the value of the neighborhood

The Board of Directors is also responsible for the overall content of this document.

2 ARCHITECTURAL CONTROL

2.1 Submitting a Request

Homeowners must submit an [Application for Architectural/Landscaping Review](#) form to the BOD for each project that is subject to Architectural Control and Use Standards.

Changes requiring approval are listed and described in the Architectural Standards section of this document (see Section 3).

Required Architectural Change Requests must be made and approved prior to the start of work on these projects.

Owners must complete the [Application for Architectural/Landscaping Review](#) according to the instructions provided in the process documentation. The Application for Architectural/Landscaping Review must include all pertinent details concerning the proposed change. Following are guidelines for the submission:

- All requests should be submitted at least 30 days before the start of work. Work cannot begin until written approval has been received.
- All exterior modifications such as fences and sheds and expansions must include a plat (map, survey) of the entire lot and the entire project.
- A sketch or plan with specifications must be submitted with the Application for Architectural/Landscaping Review.
- Both adjacent neighbors must be notified of the proposed change(s). The homeowner must make best efforts to have their neighbors sign the Application for Architectural/Landscaping Review to acknowledge their notification, but not necessarily their approval, of the proposed project.
- All exceptions to the existing Standards, the Declaration, or the Covenants must be approved in advance.
- Exterior modifications may be inspected when complete and non-compliant projects must be brought into compliance with the approved Application for Architectural/Landscaping Review.
- Many of the topics addressed in the Declarations, Covenants, and Standards are also subject to Town of Cary requirements. Homeowners are encouraged to review the Town of Cary requirements as well as the applicable Covenants before submitting and Application for Architectural/Landscaping Review.

Once all required documents have been completed the Application for Architectural/Landscaping Review should be submitted via email to Andrea Sauls at andrea@casnc.com

The review period does not start until the completed Application for Architectural/Landscaping Review and attachments are received and accepted as being complete by CASNC. The Application for Architectural/Landscaping Review will be considered on its own individual merit using the criteria outlined in the “Review Criteria” section of this document. The BOD will review the Application for Architectural/Landscaping Review and respond to the applicant in writing within thirty (30) calendar days. Application for Architectural/Landscaping Review submitted without supporting documentation will automatically be denied.

Any exterior modifications made to property without approval, or changes made in violation of the community standards may be cited as a violation.

2.2 Application for Architectural/Landscaping Review

Each Application for Architectural/Landscaping Review shall be reviewed by the BOD within thirty (30) calendar days of submission. The BOD may need to visit the site and talk with the applicant and neighbors. When the Application for Architectural/Landscaping Review has been fully considered, the BOD will approve, conditionally approve, or disapprove the Application for Architectural/Landscaping Review. The vote necessary for a decision shall be a simple majority of the total number of people currently serving on the BOD. Conditional approval means that work may proceed provided that the conditions stipulated by the BOD on the Application for Architectural/Landscaping Review are met, either before or during the work as may be appropriate.

The applicant will be notified of the BOD decision by the CASNC. In cases of conditional approval or disapproval, the applicant will be provided with additional detail about why the Application for Architectural/Landscaping Reviews was not approved as submitted. The BOD decision may be appealed under the procedures described in the section titled “Appealing a Disapproved Plan” in this document.

The BOD shall have the right to review or inspect the project during completion to ensure conformance with the approved plan and specifications. The completed project may be inspected by the BOD for final approval. The BOD will log all activity associated with the Application for Architectural/Landscaping Reviews review process and maintain all supporting documentation.

2.3 Review Criteria

The BOD evaluates each Application for Architectural/Landscaping Reviews on its own individual merits. The BOD decision will be based on the following review criteria:

2.3.1 Validity of Concept

The basic idea of the exterior or landscape change should be sound and appropriate to its surroundings. The goal is to preserve or maintain a unified and complementary total development.

It is expected that all design elements, both site and building, will complement the project. Building design points such as shape, height, width, color and texture should be in accord with the image of the entire development.

2.3.2 Protection of Neighborhood Interest

The interest of all neighbors must be protected by making provisions for such matters as: surface water drainage; sound and sight buffers; preservation of views; availability of light, air quality and movement; and other aspects of design which may have a substantial effect on the neighboring property. The BOD should consider the various and appropriate criteria and exercise objective and reasonable discretion in determining which of these criteria will govern in each specific Application for Architectural/Landscaping Review.

2.3.3 Design Compatibility

The proposed change should be compatible with the design characteristics of the applicant's home and the general neighborhood setting. Compatibility shall be determined according to harmony in style, scale, materials, color and construction details, along with workmanship and timing.

- **Style.** Harmonious to existing structure(s). For example, a colonial shed would not be harmonious with a contemporary house.
- **Scale.** The three-dimensional size of the proposed change must relate satisfactorily to nearby structures and their surroundings and topography.
- **Materials.** Continuity is established by use of the same or compatible materials as are used in the existing home. Building materials will be considered for acceptability by type, color, texture and durability. In addition, The BOD will approve the extent of use of any single material proposed, as well as its use in combination with other materials used in Brandywine. Materials **not** permitted for sidings are:
 - Concrete block
 - Metal
 - Plywood
 - Plastic or Vinyl
- **Color.** Color may be used to soften or intensify visual impact. For example, the color of a fence should blend in with the surrounding natural environment or be painted to be in continuity with the existing home. A wooden storm door should be painted to match the entrance door or other house trim color. Structures, fences and decorations should be

painted to match or augment the existing home. A change in the color of existing structures must be approved by the BOD.

- **Workmanship.** Workmanship should be equal to or better than that of the existing structure(s) on the property.

3 ARCHITECTURAL STANDARDS

Owners are reminded that they are responsible for securing all required Town of Cary, County and State permits prior to the start of a construction project. Owners must also comply with all Federal, State and Local building codes and regulations. Owners are expected to comply with the requirements of this document and any decision received from the BOD. Failure to do so may result in statutory fines, modification expenses, and delays in completing the project.

3.1 Additions

Additions to existing structures require BOD approval. The Homeowner must get BOD approval and then apply for any necessary Town of Cary permits. Copies of the Permits must be provided to the BOD. An [Application for Architectural/Landscaping Review](#) for an addition should include the following information:

- a. A plat showing the location of the addition in relation to the existing structure
- b. A description of the work being proposed
- c. The new total impervious square footage of your lot upon completion of project
 - Phase 1 homes – No Impervious limit
 - Phase 2 homes – Impervious limit of 4,169 square feet (see
- d. Estimated start and end date

3.2 Painting Your House

BOD approval is required if you want to paint your house a different color. A sample of the proposed color must accompany the Application for Architectural/Landscaping Review. Approval is not required if an existing color paint is being used for the project. Houses adjacent to each other may not be the same color.

3.3 Decks

Deck construction requires BOD approval. Like other structures, decks should be designed and constructed for aesthetic and architectural compatibility with existing structures and surroundings. The required Town of Cary permit must be obtained prior to the start of work and a copy submitted to the BOD. Decks are not considered to be impervious structures by the Town of Cary. There are no predetermined styles for decks; however, they must adhere to the following Standards:

3.3.1 Materials.

All exposed wood should be:

- 1) Pressure treated pine or fir;
- 2) Spruce;
- 3) Redwood;
- 4) Cedar;
- 5) Cypress; or
- 6) Engineered/composite wood decking materials.

The color of natural, painted or stained decks should be compatible with existing structures.

3.3.2 Height.

The deck height must be aesthetically compatible with existing structures and natural surroundings. Decks higher than the first floor will be discouraged, unless they are compatible with the architectural design and theme of the house and its setting.

3.3.3 Location.

Decks should be located at the rear of the house and must be securely attached to the house.

An [Application for Architectural/Landscaping Review](#) for a deck should include the following information:

- Location of the deck on the lot and in relation to the home and any other structures;
- A plan or sketch of the structure;
- Type of construction materials; and

3.4 Deck Enclosures

The homeowner must submit an [Application for Architectural/Landscaping Review](#) to the BOD for all proposed deck enclosures. Deck enclosures should be designed and constructed for architectural and aesthetic compatibility and harmony. An Application for Architectural/Landscaping Review for enclosing a deck must include the following information:

- A plan or sketch of the structure from two different views;
- Type of construction; and
- Color of the structure, if painted or stained.
- The new total impervious square footage of your lot upon completion of project
 - Phase 1 homes – No Impervious limit
 - Phase 2 homes – Impervious limit of 4,169 square feet

A deck enclosure, like the deck itself, also requires a Town of Cary Building permit and a copy of the permit must be provided to the BOD once it has been issued.

3.5 Fences and Walls

“No fence or wall shall be erected on any Lot closer to any side street than the side building setback line. No fence or wall shall be erected any closer than ten (10) feet from a front corner of the dwelling. Chain-link fencing and vinyl fencing are not permitted. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article VIII of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Brandywine Homeowners Association of Cary, Inc. (the “Declaration”), recorded in office of the Register of Deeds of Wake County, North Carolina. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.” (Paragraph 4 from the Covenants)

The Owner must submit an [Application for Architectural/Landscaping Review](#) to the BOD for all proposed new fences or walls, as well as for any proposed changes or additions to those already existing. In terms of architectural style and design, they shall be extensions of existing structures and consist of materials and colors that match or closely complement the existing structures. Plans for fences and walls are subject to the following minimum standards:

a. **Material.** Fences and walls shall be constructed of one of the following materials:

- 7) Cedar;
- 8) Cypress;
- 9) Redwood;
- 10) Spruce;
- 11) Pressure treated pine;
- 12) Brick or field stone;
- 13) Wrought iron or ornamental metal;

b. **Surface Treatment.** The color of natural, painted or stained fences should be compatible with existing structures.

An Application for Architectural/Landscaping Review for a fence or wall should include the following information:

- The location of the fence or wall on the lot and in relation to the home and all existing structures, including driveways and/or patios;
- The style of the fence;
- Height specifications;
- Construction materials and details; and
- Type and color of surface treatment.

3.6 Grading

Grading and other changes in topography could result in improper drainage and cause flooding on other properties. The BOD will deal with these requests on a case-by-case basis. The BOD may require the Owner to provide a site or plot plan that reflects the new topography for the changes that involve grading. The Town of Cary also has requirements to be met before making changes.

The Owner, not the Brandywine Homeowners Association, is fully and exclusively responsible for any damage that results from topographical changes made by the Owner, even if the changes were approved by the BOD.

3.7 Patios

A patio is any ground level non-earthen structure. They are usually constructed of concrete, brick, field stone or decay resistant wood materials. An [Application for Architectural/Landscaping Review](#) for a patio should provide details about the type of materials to be used, its location, and its size as well as the following information if relevant:

- The new total impervious square footage of your lot upon completion of project
 - Phase 1 homes – No Impervious limit
 - Phase 2 homes – Impervious limit of 4,169 square feet

3.8 Solar Collectors

The construction of solar energy collector panels and attendant hardware is subject to BOD approval. An [Application for Architectural/Landscaping Review](#) for solar collectors should include detailed plans and specifications. Any solar collector installation must also meet all Town of Cary requirements. Solar Collectors may not be installed on the front facing section of the roof.

3.9 Storage Buildings and Other Structures

BOD approval is required for storage buildings. Plans for storage buildings and other structures shall meet the following minimum criteria:

- Siding and roofing material must match the home.
- Paint color should match the color of the home.
- Metal storage sheds are prohibited;
- The building or structure cannot be located on Common Property and must also be located at least ten (10) feet from homeowner rear property line and at least five (5) feet from the side lines;
- Buildings cannot have permanent electric, water, or sewer utilities without a permit from the Town of Cary; and

- The size of the storage building or other structure shall be limited to a maximum of 144 square feet with walls no higher than seven (7) feet.
- Storage buildings are considered impervious structures by the Town of Cary so homes that were built during phase 2 must ensure that construction does not violate the impervious limit of their lot.

An [Application for Architectural/Landscaping Review](#) for a storage building or other structure should include the following information:

- Location of the structure on the lot and in relationship to the home and other existing structures;
- A plan or sketch of the structure;
- Type of construction material and color of the structure
- The new total impervious square footage of your lot upon completion of project
 - Phase 1 homes – No Impervious limit
 - Phase 2 homes – Impervious limit of 4,169 square feet

3.10 Swimming Pools

Above ground swimming pools are prohibited, except that portable children’s pools, no more than eight (8) feet in diameter and two (2) feet in height. They must be stored out of sight when not in use. In-ground swimming pools may be installed in rear yard areas and screened from public view. In-ground pools must be completely enclosed in child-proof fence and otherwise meet all State, County and Town of Cary code standards. Owners, not the Brandywine Homeowners Association, are fully and exclusively liable for any accident involving their swimming pools. An Application for Architectural/Landscaping Review for an in-ground swimming pool should include the following information:

- Location of the pool on the lot;
- A plan detailing the size of the pool and surrounding patio
- The new total impervious square footage of your lot upon completion
 - Phase 1 – No Impervious Limit
 - Phase 2 – Impervious Limit of 4,169 Square Feet
- A plan for enclosing the pool area that follows the architectural standards for fences

3.11 Tree Removal

“Except in the case of an emergency situation that does not permit any delay, no living tree larger than 6” in diameter at a point measured 3’ off the ground shall be removed from any Lot without the approval required by Article VIII of the Declaration. The foregoing provision shall apply only to Lots which have been

occupied pursuant to a certificate of occupancy issued by Cary.” (Paragraph 17 of the Covenants)

Any requests to remove a tree that is on the homeowner’s lot, is larger than 6” in diameter at a point measured 3’ off the ground, and is closer to the street than the two front corners of the house will not be approved unless the homeowner stipulates to replanting a similar type of tree in the same vicinity within 30 calendar days. Any request to remove 6 or fewer trees that are on the homeowner’s lot, that are larger than 6” in diameter at a point measured 3’ off the ground and are further from the street than the two rear corners of the house shall be approved. Any request to remove more than 6 trees, that are larger than 6” in diameter at a point measured 3’ off the ground, shall require approval from the BOD by submitting an [Application for Architectural/Landscaping Review](#) .

4 Use Standards and Restrictions

Authorization for Use Standards by the BOD is found in the Covenants (*See* Appendix B, “Use Standards” Section 1 – Rules and Regulations). The Standards set forth in this section define those activities, behaviors and uses of property that the Board of Directors has determined are not in the best interest of *protecting the value and desirability* of all of the properties within Brandywine Subdivision.

Owners must also comply with all Federal, State of North Carolina and Town of Cary regulations and statutes that are applicable to the following Use Standards.

4.1 Antennas and Satellite Dishes

“No radio or television transmission or reception towers or antennas shall be erected on a Lot other than a customary television or radio reception antenna, which shall not extend more than ten (10) feet above the top roof ridge of the house. However, a satellite antenna receiver or disc will be permitted on a Lot if: (i) the receiver or disc is not larger than two feet (2’) in diameter; (ii) the receiver or disc is located on the side of the house away from the street and within the building set back lines applicable to that Lot; and (iii) the receiver or disc is located or screened in such a way that it cannot be seen from any street within the Subdivision. Any such screening must be approved as provided in Article VIII of the Declaration. In no event shall any free-standing transmission or receiving tower be permitted on any Lot.” (Paragraph 3 of the Covenants)

4.2 Clotheslines

“No exterior clothesline may be erected or maintained on any Lot.” (Paragraph 14 of the Covenants)

4.3 Garbage and Garbage Receptacles

“All trash and rubbish shall be kept in garbage cans stored in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.” (Paragraph 15 of the Covenants).

4.4 Garbage Can and Recycle Can Screening

Fences built to screen garbage and recycle cans are subject to the restrictions in Section 3.5.

4.5 Lawn and Exterior Maintenance

“The owner of each Lot shall maintain the grounds and improvements on his Lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner.” (From Paragraph 15 of the Covenants)

Owners are responsible for caring for the lawns, natural areas, and landscaping on their lots to the front and side of their property adjacent to the streets. Owners are reminded that this part of the Common Open Space is perceived to be a part of each lot and, if not properly maintained, it reflects poorly upon the lot associated with it.

- Weed control is very important to maintaining a neat and attractive lawn. Many local lawn service companies offer plans that include the application of pre-emergent, weed killer, fertilizer, and lime for a healthy lawn. If you prefer a DIY approach, application of a pre-emergent in early April will help reduce weed development and spot treatment with a weed killer will prevent them from overtaking your lawn. Conventional wisdom suggests setting your mower to cut grass to a height of 3 inches, making sure your lawn gets 1” of water each week, and covering bare spots with seeds as needed. Lawns that are overrun with weeds will be noted in the monthly inspections performed by our management company and homeowners will be notified of the urgency to remove them.
- Trees and bushes must be kept appropriately trimmed.
- Fallen limbs, branches, trees, and debris must be removed from both lawns and natural areas and disposed of properly.
- The cutting down of trees in lawns or natural area is subject to the restrictions in the Tree Removal section of this document. Stumps from removed trees in lawn, beds, or natural areas must be removed or cut to ground level and covered.
- Lawns must not be allowed to grow over eight (8) inches tall.
- Tall Fescue is the preferred grass of the neighborhood. Zoysia is permitted contingent upon installation of barriers to prevent it from invading your neighbors’ lawns. Artificial turf is not permitted.

In addition to the Architecture and Use Standards, BHOA is subject to the Town of Cary regulations landscaping and maintenance regulations.

The Town of Cary regulations on tall grass and weeds reads as follows. “Tall grass, weeds and undergrowth on any property in the Town should not exceed a height of 8 inches. If a property owner, lessee or occupant with control of a property fails, refuses or neglects to cut, destroy, or remove such weeds within two (2) days after receipt of notice to do so given by the Public Works and Utilities Department, then the Town through its agents and employees, may enter upon such lot or premises for a depth of fifty (50) feet from each abutting property line and cut and destroy such weeds and undergrowth for a depth of fifty (50) feet from each abutting property line, and the cost and expense thereof shall be paid by the owner, lessee, occupant or agent, or it shall become a lien against such property in the same manner as for taxes.”

4.6 Play Equipment

“No portable basketball goals will be allowed. Permanent basketball goals will be allowed subject to architectural approval, however permanent basketball goals may not be attached to the dwelling and must have a clear backboard. Trampolines shall be allowed as long as the trampoline is screened and not visible from roadways within the community.” (Paragraph 30 of the Covenants)

4.7 Signs

Temporary occasional signs of a personal nature are permitted, such as those that:

- Announce a new arrival or birthday, may be displayed for not more than one week.
- Garage or yard sale signs may be displayed only during the day before and the day of the sale.

The following Town of Cary regulations on political signs apply to BHOA:

- They are permitted on private property (with the property owner’s permission) and not within the public right-of-way or affixed to any improvement within such right-of-way (median, utility pole, traffic control device, bridge, guardrail, or other safety barrier), within a required sight distance triangle.
- One (1) sign is permitted per individual lot or parcel for each candidate for office or side of a ballot measure or issue; for a lot or parcel with frontage on a second street, one (1) additional sign for each candidate for office or side of a ballot measure or issue shall be permitted.
- Political signs may not exceed five (5) square feet in area per sign face or forty-two (42) inches in height, except where such sign is erected in place of another type of sign permitted at that location, in which case it may be the same size and subject to the same conditions as such sign.
- In addition, political signs are required to be removed within ten (10) days following the date of any election or other event to which it refers, except that signs for successful

primary election candidates, eligible for the general election, may remain after the primary election.

4.8 Vehicle Parking

“Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface” (From paragraph 6 of the Covenants)

4.9 Parking Rules (Adopted on August 15, 2013)

WHEREAS, parking has been a recurring safety issue within the Brandywine community,

WHEREAS parking incidents have caused significant safety and welfare issues which prevent the orderly and efficient use of our streets, including access by emergency personnel and necessary services,

WHEREAS the streets within Brandywine subdivision are narrower than older subdivisions, are not wide enough to accommodate both two-way traffic AND on-street parking, and therefore certain parking restrictions must be enforced in order to ensure safe access and free-flowing traffic throughout our community,

WHEREAS the promotion of a safe and secure order of access within our neighborhood is beneficial to residents, our security, and our property values.

The following parking rules are hereby adopted effective after 15 days of distribution by the current property management company, and are binding on Brandywine owners, residents, tenants, guests and invitees. All vehicles located, whether standing or parked, within the community are subject to state and local laws and these rules. Owners and residents are responsible for the actions of their tenants, guests and invitees. Any vehicle in violation of the state, local, or community rules shall be subject to enforcement actions, including towing and/or ticketing:

1. All parking must be done in a manner that allows all streets to be passable by large-scale trucks at all times, including but not limited to commercial delivery trucks, school buses, fire trucks, ambulances, and any emergency vehicle.
2. No vehicle shall be parked directly across the street from another parked vehicle.
3. No on-street parking is permitted within 50' of any intersection at any time.
4. All parking must be done in a manner that does not obstruct any owner's exit from his or her driveway. This includes but is not limited to parking a vehicle perpendicular to a driveway across the street, or parking in such a manner where the owner will be unable to move his or her vehicle from the driveway in any configuration.

5. No vehicle shall obstruct any mailbox, fire hydrant, or other visible above-ground public facility (water meters, electrical boxes, etc.)
6. All parking must be done in a manner that does not obstruct any sidewalk. This rule means that no portion of a vehicle can hang over the sidewalk crossing the owner's driveway.
7. If any vehicle will be parked on any street within the neighborhood for longer than 48 hours, you must contact the property manager. Owners are encouraged to contact the property manager in advance of such situations if possible.
8. Failure to abide by any of these rules could result in penalties and/or fines for each violation. Such penalties include, but are not limited to, a warning notice for first offense, and a fine of \$20 for each day the violation continues for any second or additional offense, as described in the attached Brandywine HOA Rules and Regulations CC&R Violation and Enforcement Policy.
9. For purposes of clarification, "commercial vehicle" as used in Section 6 of the Restrictive Covenants for Brandywine Subdivision, shall mean any vehicle bearing commercial tags from any state Division of Motor Vehicles and bearing some form of advertisement, including school or church vans or buses.
10. Homeowners must contact property manager when an event is planned that will likely generate a large number (5 or more) of vehicles parking on the street. The property manager can then advise neighbors and/or warn of conflicting events.
11. No homeowner's parking space may be sold or offered in exchange for anything of value.
12. These rules are in addition to and in clarification of any parking restrictions in the Declaration of Restrictive Covenants. If there is a conflict between these rules and the Declaration, the Declaration shall control.
13. Any owner or resident who directly engages a tow company to enforce any provision of these rules shall bear full and complete responsibility for said action and shall agree to hold the Brandywine HOA, its Officers, members of its Board of Directors, and its Managing Agent harmless from any and all liability, costs, or fees they may incur in defending themselves for any enforcement actions undertaken which were not directly authorized by the Managing Agent.

4.10 Vehicle Maintenance

The assembly or disassembly of motor vehicles and other mechanical devices is prohibited, unless it is done within the confines of the Owner's garage. Minor maintenance tasks, like changing oil, filters or spark plugs, can be done outside of the garage if the work is completed in one day's time. All petroleum waste generated from such work must be properly disposed of by the Owner and not dumped in any lot or Common open Space.

4.11 Window Air Conditioners

BOD approval is not required for window air conditioners that adhere to the following Standards:

- Concealed from view of all streets; and
- Operational noise must be no greater than that of existing central air units.

Installations that would deviate from these Standards must be approved by the BOD.

5 Architecture and Use Standards Enforcement

5.1 Reporting Violations Homeowner Report of Suspected Violations

If a violation or potential violation is noticed, every Owner is encouraged to have a personal conversation with their neighbor before reporting it. We aspire to be a friendly neighborhood and hope that we can have open conversations with each other about protecting the value of our homes and abiding by the Declarations and Covenants we all signed. We understand that there may be times when personal extenuating circumstances make it challenging to uphold these standards, which can afford us the opportunity to show support. If necessary, Homeowners can anonymously report a suspected violation of the standards by using the calling or sending an email to the BHOA management company.

5.2 Property Management Company Report of Suspected Violations

Our property management company conducts monthly drive through inspections of the neighborhood. Prior to each inspection, the property management company inspector prints a drive-order report. This report contains open and closed violation issues, open BOD requests, closed BOD approvals and denials. The inspector takes note of each property and takes photos as necessary. These notes are then used to create new violation letters, close open violations that have been resolved, and escalate continuing violations. It is important to note that the inspector cannot enter a homeowner's property. All inspections are completed from the street. The management company report also contains notes derived from homeowner contacts such as calls saying a violation has been resolved, requests for photographs of violations, or other instructions and homeowner reports.

5.3 Enforcement

The basic tenant of the enforcement of the Architectural and Use Standards is that all homeowners agree to voluntarily comply with the Standards when they purchased a home in Brandywine. Therefore, the enforcement process moves in phases from simple reminders of non-compliance to remedial action to force compliance with the Standards. Violations and enforcement go through four phases. Each phase relies on the inspections and reporting of violations previously described in this section. The BHOA management company assists the

Board of Directors by providing the official communication between the Board and the homeowners. The four enforcement phases include:

1. Friendly reminder
2. Official notification
3. Hearing
4. Final actions

Timing between each step depends on the nature of the violation. Easily corrected violations such as landscape maintenance or removing a lawn sign are given shorter correction periods than more difficult items such as making a home repair.

5.3.1 Friendly Reminder

The ‘friendly reminder’ is a letter from the management company to a homeowner that points out or reminds a homeowner of their non-compliance with the Standards. The objective of the letter is to have the homeowner voluntarily correct the non-compliance.

5.3.2 Official Notification

If after a homeowner fails to respond to the ‘friendly reminder’ the management company may issue a Notice of Violation. A date is specified for expected correction of the violation. The Board may offer suggestions for remediation or correction of the violation. The notice details on the Standards that is being violated.

If the inspector notices a property change without a BOD on file, the homeowner will receive a Notice of Unapproved Application for Architectural/Landscaping Reviewing that the homeowner submit a “[Application for Architectural/Landscaping Review](#)” for review and approval. Work on the unapproved change should stop immediately until the BOD has been submitted and approved.

5.3.3 Homeowner Hearing

If a homeowner does not bring their property into compliance with the Standards, based on the violation, the Board may elect to impose a fine for the violation. Before the fine associated with the violation can be levied, the homeowner will be given an opportunity to attend a hearing before the BHOA Board. The objectives of this phase are:

- to ensure the violation is clearly explained and understood by the homeowner;
- to understand the homeowner’s position and assist the homeowner in evaluating potential courses of action;
- to obtain homeowner agreement on voluntary compliance and an action or remediation plan; and
- If necessary, to discuss potential actions available to the Board if an action or remediation plan cannot be agreed upon.

When the violation reaches this level, the homeowner will be informed by registered letter of the time and date of the hearing. The letter will contain a description of the unapproved modification and any photos and correspondence that pertain. The homeowner must be notified of the hearing within a minimum of ten (10) days prior to the hearing date. The Board will make good faith efforts to work with the homeowner on the scheduling of the hearing. However, the Board may conduct the hearing and make a fine determination, without the presence of the homeowner if the homeowner decides not to attend. If a homeowner does not participate in the Hearing, the Board may decide on a remedial action or fine in the homeowner's absence. Some fines for non-compliance are described in other sections of this document. The determination of the Board is final and cannot be appealed. The homeowner will receive notification of the determination by registered mail

5.3.4 Final Actions

As a result of the Board determination at the hearing, the homeowner may be subject to the following actions:

- Suspension of Owner's voting rights and privileges;
- Fine at the daily or per incident rate of \$10.00 for the violation until it is corrected;
- Collection of outstanding fines, penalties and fees associated with this action by private agency;
- Brandywine Homeowners Association may initiate litigation against the Owner to recover all costs associated with this action, including its reasonable attorney's fees and expenses incurred. At the discretion of the Board, legal actions may include;
 - Filing of lien against the Owner's property for all outstanding fines, penalties and fees associated with this action. The lien shall remain in effect until such time that the violation has been corrected and all fines have been paid in full.
 - If the lien remains unpaid for a substantial period of time, the Board may seek to foreclose the lien by forced sale of homeowner property under court order. A lien will be filed against the Owner's property for all outstanding fines, penalties and fees associated with this action. The lien shall remain in effect until such time that the violation has been corrected and all fines have been paid in full. The Owner will be notified of this action by the attorney;

The Owner will receive notification of initiation of these legal actions from the attorney hired by the board or its agent.

6 Amending Architecture and Use Standards and Processes

The Architecture and Use Standards is a living document that should reflect the current values of the BHOA and homeowners. The Architecture and Use Standards and processes may be changed or amended as the need to do so is recognized. Amendments to this document will be in response to events that identify deficiencies or appropriate changes in a process, the Standards or the document itself. Amendments may also be in response to a change in the values or beliefs of the Association. This section defines the amendment process.

Owners are encouraged to discuss any concerns that they may have about the Architecture and Use Standards or processes with a member of the Board of Directors or BOD. The BOD is the focal point for initiating amendments to the Standards. As such, they are charged with carrying all requests for amendment forward to the Board of Directors for review. The Board of Directors, who is elected by and represents all Owners, has sole authority for amending this document.

The Architecture and Use Standards can be amended through the following process:

1. Written proposals for amendments can be submitted to the BOD for consideration.
 - a. Greater consideration will be given to proposals based on the level neighborhood support as indicated by number of homeowner signatures (1 per household).
 - b. Proposals must be in keeping with the Declarations and Covenants on file with the Wake County Register of Deeds.
 - c. The Board reserves the right to solicit feedback from the neighborhood at large prior to consideration.
2. The BOD will discuss the proposal at their next regularly scheduled meeting and vote on any motion to add it to the Standards as received or with BOD changes.
3. If approved, the Board of Directors will notify Owners via email.

7 Appendices

Appendix A. Architectural Control excerpt from the Declaration of Covenants, Conditions, and Restrictions of Brandywine Subdivision

Appendix B. Use Restrictions excerpt from the Declaration of Covenants, Conditions, and Restrictions of Brandywine Subdivision

Appendix C. Neighborhood Plat Maps

Appendix D. Application for Architectural/Landscaping Review

7.1 APPENDIX A. DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

**WAKE COUNTY, NC 444
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED
ON
06/19/2007 AT 14:46:34**

**BOOK:012609 PAGE:01343 -
01366**

Drawn by and Mail To: J. Kenneth Edwards, Gwynn & Edwards, PA, 5909 Falls of Neuse, Ste.
200, Raleigh, NC 27609

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR
BRANDYWINE HOMEOWNERS ASSOCIATION OF CARY, INC.**

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR
BRANDYWINE HOMEOWNERS ASSOCIATION OF CARY, INC.**

THIS DECLARATION is made on the date hereinafter set forth by **The Drees Company d/b/a The Drees Homes Company**, a corporation authorized to do business in North Carolina (hereinafter “Declarant”);

WITNESSETH:

WHEREAS, Declarant is now the owner of all that certain property designated as Brandywine Subdivision as further described on the attached Exhibit “A”, and being the property, more fully described in the deed recorded in Book 11539, Page 27, Wake County Registry (as hereinafter defined as “Property”); and

WHEREAS, Declarant desires to create on such property an exclusive residential community of detached single-family homes to be known as Brandywine Subdivision (hereinafter sometimes referred to as the “Subdivision”); and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area within the Subdivision, to provide for enforcement of covenants and restrictions applicable to the Subdivision and to provide a vehicle for ensuring that storm water drainage systems and facilities within the Subdivision are properly maintained, and, to that end, desires to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, including, without limitation, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a nonprofit corporation, **BRANDYWINE HOMEOWNERS ASSOCIATION OF CARY, INC.**, for the purpose of exercising the aforesaid functions; and

WHEREAS, Declarant shall be responsible for the management of the **BRANDYWINE HOMEOWNERS ASSOCIATION OF CARY, INC.** and Declarant desires to submit the Property to the same covenants, conditions, restrictions, easements, charges and liens as set forth in this Declaration and to further join and utilize **BRANDYWINE HOMEOWNERS ASSOCIATION**

OF CARY, INC. to administer and enforce these covenants and restrictions applicable to the Subdivision.

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

ARTICLE I DEFINITIONS

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

Section 1. “Act” shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act.

Section 2. “Association” shall mean and refer to **BRANDYWINE HOMEOWNERS ASSOCIATION OF CARY, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 3. “Board of Directors” and “Board” shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws.

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

Section 5. “Common Area” shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically including the area within any storm water easements and the facilities constructed therein and which serve more than one Lot and are not maintained by any governmental authority. Common Area shall also include all earthen dams surrounding the lakes or ponds within the Subdivision. Common Area also includes water and sewer lines which serve more than one Lot and are not located within a Wake County or Declarant utility easement or a public street right-of-way. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility as set forth herein. Such maintenance shall include,

without limitation, the maintenance of the Stormwater Control Structure Easement and Access Easement in accordance with the provisions of that certain Stormwater Control Structure and Access Easement and Agreement between Declarant and the Town of Cary recorded in Book 12494, Page 851, Wake County Registry. The maintenance obligation shall also include the maintenance of other Stormwater Control Structure Easements and Access Easements as may be dedicated in future phases of Subdivision and subject to future agreement between Declarant or the Association and the Town of Cary.

Section 6. “Declarant” shall mean and refer to **The Drees Company d/b/a The Drees Homes Company**, a Kentucky Corporation. It shall also mean and refer to any person, firm or corporation to whom or which The Drees Company d/b/a The Drees Homes Company, shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry.

Section 7. “Declarant Control Period” shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31,2017;
- (b) When the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; provided, however, that. Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subsection to this Declaration of new Lots as set forth in Article II hereof, thus making Declarant the Owner, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, of a sufficient number of votes (at the 3-to-1 ratio) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of Declarant Control shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Section 8. “Lot” shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision maps of the Properties, with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded maps. In the event that any Lot is increased or decreased in size by recombination or resub division through recordation of a new subdivision plats, any newly platted lot shall thereafter constitute a Lot.

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

Section 10. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 11. “Common Open Space” or “Open Space” shall mean Common Area, owned by the Association, which shall be maintained for buffer purposes, active recreational uses or passive recreational uses, including, but not limited to natural preservation. Common Open Space shall not include public roads within the property. The Common Open Space and the permitted uses thereon shall be designated herein or on a plat or plats of Brandywine Subdivision recorded or to be recorded in the office of the Wake County Register of Deeds. All Common Open Space may be subjected to easements for utilities, including sewer and waterlines, easements for ingress and egress as necessary for installation, maintenance and repair of utilities, greenway easements and may be subjected to easements for any encroachments arising from initial improvements.

Section 12. “Properties” shall mean and refer to the Property described in **Exhibit A** to this Declaration and any additional property annexed pursuant to Article II.

Section 13. “Special Declarant rights” means rights reserved for the benefit of the Declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of Declarant control.

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

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

Section 2. Additions to Existing Property. At any time prior to December 31,2017, additional lands may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of plats showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subject to this Declaration (or separated from such property only by the right-of-way of a public street or road) and must be approved by the County of Cary and, if appropriate, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Should Declarant elect to annex any Additional Property and accordingly subject such property to the terms and conditions of this Declaration, Declarant reserves the right to provide a new subdivision name for the Additional Property, to alter the restrictions contained in the Restrictive Covenants of Brandywine Subdivision as to the Additional Property and to provide for an alternative assessment structure with regard to any Additional Property.

The annexation of Additional Property authorized under this section of the Declaration shall be effective upon the recording of a Supplementary Declaration of Covenants and Restrictions for the Additional Property which shall extend the effect and operation of this Declaration to the Additional Property. The Supplementary Declaration may contain changes, deletions and/or modifications as may be necessary or convenient, in the sole discretion of the Declarant, to reflect the difference in character, if any, of the Additional Property and the change in plan of development for said Additional Property from the Existing Property.

Section 3. Conveyance of Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

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

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two classes of membership with respect to voting rights:

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

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to three (3) votes for each Lot that it owns (each a "Class B Lot").

Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the dwelling constructed thereon as his own personal living quarters or if any residence within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association.

An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least twelve (12) months, in writing and contain the following provision:

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

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Each Owner shall furnish the Association a copy of any lease or sublease of his dwelling.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by the Rules and Regulations adopted by the Members and/or the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use

of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

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

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

(c) the provisions of the Cary zoning ordinances and regulations, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to Cary or to another nonprofit corporation for the aforementioned purposes. Notwithstanding any other provision of this Declaration, the Board of Directors of the Association may, without vote of the Members, exchange Common Area for equivalent real property, provided that such exchange is approved by Cary.

(d) the provisions of the Cary zoning ordinances and regulations, the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association, as provided by and consistent with the Cary zoning ordinances and regulations, as same may be amended from time to time, to exchange all or part of the Common Area for other property and consideration of like value and utility.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Properties. Any Owner who rents or leases his or her Lot to a tenant shall be not entitled to use and enjoy any common facilities in the Common Area during the period that the Lot is occupied by such tenant as their principal residence in Wake County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title to The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision to an Owner, it will convey to the Association title to those portions of the Common Area, if any, owned in fee by the Association. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for the purpose of constructing any improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision, and the lien of ad valorem taxes not yet due and payable. Any planned improvements or amenities placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements or amenities.

Section 4. Regulation and Maintenance of Common Area. It is the intent of the Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, Declarant will, prior to the conveyance of the first Lot in any phase or section of the Subdivision to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of

any Lot within such phase or section on which a Common Area easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

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

It is the intent of the Declarant that a Common Area easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner. If an Owner of a Lot on which a Common Area easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the undeveloped Common Area in its vegetated or natural state; or if in an improved state, keep it free of impediments to its free use by the Owners; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; (iii) maintain the Stormwater Control Structure Easement and Access Easement in accordance with the provisions of any Stormwater Control Structure and Access Easement and Agreement between Declarant and the Town of Cary and (iv) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement, and any other portion of the Lot to the extent necessary to gain access to the Common Area easement, for the purposes of: (i) installing and maintaining entrance signage and other signage; (ii) making such improvements to the Common Area easement as have been approved by the Association; (iii) maintaining the Common Area easement in its natural or

improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use; and (iv) maintaining the Stormwater Control Structure Easement and Access Easement in accordance with the provisions of any Stormwater Control Structure and Access Easement and Agreement between Declarant and the Town of Cary. . No such entry set forth in this paragraph shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 7 of this Article V and all costs of collection, including reasonable attorneys' fees, shall be a charge on the land and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, storm water drainage facilities and maintenance of the Stormwater Control Structure Easement and Access Easement in accordance with the provisions of any Stormwater Control Structure and Access Easement and Agreement between Declarant and the Town of Cary , and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of

labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance; (v) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; and (vii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2007, the Maximum Annual Assessment shall be \$480.00 for each Class A Lot.

(a) From and after January 1, 2008, the Maximum Annual Assessment for Class A Lots may be increased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed ten percent (10%) of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

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

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month following conveyance of a Lot to an Owner from the Declarant. There shall be no annual assessment for Class B Lots.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all Class A Lots and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

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

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than ten percent (10%) larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

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

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the common Elements, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, and the cost to purchase Lots and dwellings at foreclosure sales of Association liens, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvements upon the Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days

prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (%) of the required quorum at the preceding meeting.

Section 7. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur a monthly late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the maximum rate allowable by law, whichever is greater. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 9. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 10. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to three hundred and 00/100 Dollars (\$300.00) shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

ARTICLE VI
RIGHTS OF LENDERS

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

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

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

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

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

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

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

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

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

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

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

ARTICLE VII EASEMENTS

Section 1. Access, Drainage and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power transmission lines, sanitary sewer and storm water drainage facilities and for other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1 (c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

To the extent that any improvement constructed by the Declarant infringes or encroaches into a drainage easement or utility easement established by the Declarant or reflected on a recorded map of the Property, the Declarant, in its sole discretion, shall have the right to waive minor violations that do not impact the reasonable use of the easement area.

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, the delivery of mail and verification of the Declarant's or Association's fulfillment of its obligations of

maintenance of the Stormwater Control Structure Easement and Access Easement in accordance with the provisions of any Stormwater Control Structure and Access Easement and Agreement between Declarant and the Town of Cary.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any part of a dwelling is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over the Common Area or Common Open Space is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from the Common Area or Common Open Space and for the use thereof.

Section 5. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment.

Section 6. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon or is a clear violation of this Declaration or the Restrictive Covenants applicable to the Lot, including, but not limited to an obligation of maintaining the subject Lot.

Section 7. Sight Distance Easement. Sight distance easements are hereby established across all Lots as indicated on the recorded map of the Property. Within the sight distance

easement, no Owner shall create, plant or erect a wall, fence, foliage, berm, parked vehicle, sign or any other obstruction between two feet and eight feet tall above the curb line.

Section 8. Private Landscape Easement. A twenty foot (20') wide private landscape easement is hereby established across all Lots so indicated on the recorded map of the Property. A perpetual, nonexclusive easement over all said Lots is hereby granted to the Association, its employees, subcontractors and utility companies, for the purpose of establishing, maintaining and upkeeping the landscaping established by the Association, including, but not limited to plants, trees, shrubs, fences and other improvements constructed by the Declarant or the Association and located within the private landscape easement.

Section 9. Sign Easement. Easements are also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of the Lots, Easements and Common Open Space where entry signs are located, for the purpose of installing, operating, repairing and maintaining landscaping and subdivision entrance signage, landscaping and fencing in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article VIII of the Declaration and, if required, by the City.

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

ARTICLE VIII ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs) wall or other structure shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the

“Architectural Guidelines”) which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article VIII to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural BOD composed of three (3) or more persons appointed by the Board. Such delegation shall be made by the Declarant by recording in the Wake County Registry an Assignment Of Declarant's Rights. Declarant shall delegate such authority no later than the date upon which Declarant no longer owns any Lots within the Properties, and no termination of Special Declarant Rights shall be deemed a termination or assignment of the rights reserved to Declarant in this Article VIII. Any use of the term “Declarant” in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural BOD. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

Neither Declarant nor the Association, nor any officer, director, manager, member or employee of either, shall be liable for damages to any person by reason of mistaken judgment, negligence, or nonfeasance in connection with the approval or disapproval or failure to approve or disapprove any plans, specifications and/or Improvements.

ARTICLE IX GENERAL PROVISIONS

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

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

such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

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

Section 3. Amendment. Otherwise, the covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. During the Declarant Control Period, the Declarant may amend this Declaration, without the consent or joinder of the Members or the Association, for the purpose of conforming this Declaration to the requirements of any governmental law or regulation. This Declaration may also be amended during the first twenty-five-year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article IX, by the Federal Housing Administration or Veterans Administration, and is recorded in the office of the Register of Deeds of Wake County.

Section 4. FHA/VA Approval. In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mortgaging of real property owned by the Association, deeding of Common Area to persons other than the Association (not including the granting of an easement or exchanges permitted by Article IV, Section 1(c) hereof), and amendment of this Declaration.

Section 5. Non-Liability of the City. Neither Cary nor any other municipality, shall be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

Section 6. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on recorded plats of the Subdivision, except with the consent of the Declarant and, if required, by Cary.

Section 7. Declarant's Right to Change Development. With the approval of Cary, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within, and withdraw real property

from the development. Declarant shall have all Special Declarant Rights as set out herein and granted pursuant to N.C.G.S. 47F-1-103(28).

Section 8. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than \$1,000,000.00. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors' and employees' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration.

Section 9. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the Restrictive Covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association shall not have the right to suspend the right to use private streets providing access to an Owner's Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any open space and recreational facility within the Properties if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

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

Section 10. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements unless at least sixty-seven percent (67%) of the Members vote at such meeting against reconstruction, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house).

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized officer, as of the _____ day of _____, 2007.

The Drees Company d/b/a The Drees Homes Company

By: _____ (SEAL)

Name: _____

Title: _____

STATE OF NORTH CAROLINA _ COUNTY OF WAKE

I, _____, a Notary Public for said County and State, certify that _____ of **The Drees Company d/b/a The Drees Homes Company**, a Kentucky corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of the Company.

Witness hand and official stamp or seal, this the _____ day of _____, 2007.

Notary Public: _____

My commission expires: _____

7.2 **APPENDIX B. RESTRICTIVE COVENANTS FOR BRANDYWINE
SUBDIVISION**

**WAKE COUNTY NC 446
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED
ON
06/19/2007 AT 14:46:34**

Drawn by & HOLD FOR: J. Kenneth Edwards, Gwynn & Edwards, PA **BOOK: 012609
PAGE: 01367 - 01375**

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**RESTRICTIVE COVENANTS
FOR
BRANDYWINE SUBDIVISION**

The Drees Company d/b/a The Drees Homes Company, a corporation authorized to do business in North Carolina (hereinafter "Declarant"), hereby declares that the real property described on **Exhibit A** attached hereto and made a part of Brandywine Subdivision (hereinafter the "Subdivision") is and shall hereafter be held, transferred, sold and conveyed subject to the following restrictive covenants, which shall be appurtenant to and run with the land, by whomsoever owned, to wit:

1. **LAND USE AND BUILDING TYPE.** All Lots shall be used for residential purposes; provided, however, Declarant or Declarant's assign, may use any Lot within the Property as a temporary sales office and/or model home for the purposes of carrying on business related to the development, improvement and sale of lots and/or homes within the Property. The temporary sales office may be a trailer and shall not be required to have a foundation. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, a private garage for not more than three (3) cars, and other out-buildings incidental to residential use of the Lot. Any out-building or detached garage shall be constructed of similar materials to that of the main dwelling. No metal out-buildings shall be allowed.

2. **DWELLING SIZE.** As to Lots 44-83, inclusive, Brandywine Subdivision, the minimum heated square footage of a dwelling, exclusive of open or screened porches, carports, garages and decks, may not be less than 2300 square feet.

3. **BUILDING SETBACKS; HOUSE LOCATION.** No dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plats of the

Subdivision or as otherwise required or permitted by the Wake County zoning ordinances and regulations (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such dwelling. Any dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a dwelling may be erected so as to face the intersection of the two streets on which the Lot abuts.

4. FENCES. No fence or wall shall be erected on any Lot closer to any side street than the side building setback line. No fence or wall shall be erected any closer than ten (10) feet from a front corner of the dwelling. Chain-link fencing and vinyl fencing are not permitted. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article VIII of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Brandywine Homeowners Association of Cary, Inc. (the "Declaration"), recorded in office of the Register of Deeds of Wake County, North Carolina. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

5. TEMPORARY STRUCTURES. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. The restrictions contained herein shall not be deemed to apply to any sales office, construction trailer, model home, or other temporary improvement installed by or with the approval of Declarant.

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

No mobile house trailer (whether on or off wheels), vehicle or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Subdivision. No boat or boat trailer shall be parked anywhere within the Subdivision, but boats and boat trailers may be stored out of sight within a garage.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Subdivision or the

Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

7. ANIMALS. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes. In no event shall any dwelling have more than three dogs and/or three cats.

8. NUISANCES; BUSINESS ACTIVITY. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No business trade or activity may be conducted on any Lot unless permitted by the Wake County zoning ordinances and regulations.

9. SIGNS. Except as otherwise required by Wake County, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, one sign of not more than ten (10) square feet advertising the property for sale or rent, and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election.

10. ANTENNAS; SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers or antennas shall be erected on a Lot other than a customary television or radio reception antenna, which shall not extend more than ten (10) feet above the top roof ridge of the house. However, a satellite antenna receiver or disc will be permitted on a Lot if: (i) the receiver or disc is not larger than two feet (2') in diameter; (ii) the receiver or disc is located on the side of the house away from the street and within the building set back lines applicable to that Lot; and (iii) the receiver or disc is located or screened in such a way that it cannot be seen from any street within the Subdivision. Any such screening must be approved as provided in Article VIII of the Declaration. In no event shall any free-standing transmission or receiving tower be permitted on any Lot.

11. SWIMMING POOLS. No above-ground swimming pools shall be permitted in the Subdivision, except that small, inflatable wading pools shall be permitted.

12. MAILBOXES. No mailbox shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article VIII of the Declaration.

13. MAINTENANCE OF LOT; CONSTRUCTION. Each owner shall keep their Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair. In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of

God, or as a result of any other act or thing, the owner of such Lot shall repair the damage and reconstruct the improvement within twelve (12) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the owner may, at his option, either completely remove the damaged structure and landscape area on which the structure stood or repair or reconstruct the structure.

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

14. CLOTHESLINES. No exterior clothesline may be erected or maintained on any Lot.

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

16. SEPTIC TANKS; WELLS. No septic tank shall be installed, used or maintained on any Lot unless approved by the Wake County Health Department. No well shall be installed, used or maintained on any Lot except as may be approved by the architectural BOD.

17. REMOVAL OF TREES. Except in the case of an emergency situation that does not permit any delay, no living tree larger than 6" in diameter at a point measured 3' off the ground shall be removed from any Lot without the approval required by Article VIII of the Declaration. The foregoing provision shall apply only to Lots which have been occupied pursuant to a certificate of occupancy issued by Cary.

18. EXTERIOR MAINTENANCE. The owner of each Lot shall maintain the grounds and improvements on his Lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner.

19. EASEMENTS. Easements for the installation, maintenance and repair of sanitary sewer and storm water drainage facilities are reserved as shown on the recorded plats. Within such

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

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

Easements are also reserved for the benefit of the Declarant, Brandywine Homeowners Association of Cary, Inc. (the Association"), and Town of Cary (the "Town"), and their respective successors and assigns, over, across and under those portions of the Lots shown and designated on the maps referred to in Exhibit A as "Drainage Easement" and across the Common Open Space for "Stormwater Control Structures and Access Easement Area", or any variation thereof, for the purpose of installing, operating and maintaining storm water drainage facilities thereon. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant, the Association or the Town, unless approved as provided in Article VIII of the Declaration and, if required, by the Town.

The Declarant, the Association and their successors and assigns shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Paragraph 19.

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

21. UNINTENTIONAL VIOLATIONS. Declarant, or the persons or firms to whom the and approval authority has been delegated pursuant to Article VIII of the Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that no waiver may be granted for a violation in excess of twenty-five percent 25% of the applicable requirements. No such waiver shall be effective unless the Lot and

all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Wake County Registry.

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

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

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

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

26. BRANDYWINE HOMEOWNERS ASSOCIATION OF CARY, INC. The owners of Lots within the Subdivision are Members of the Association and are subject to and bound by the Declaration, which provides additional restrictions on such Lots.

27. DECLARANT. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant so long as said development follows the general plan of development previously approved by the Town of Cary.

28. OPEN SPACE. The Homeowners Association shall be responsible for the maintenance of Common Open Space. Common Open Space shall mean Common Area which shall be maintained for forestry or agricultural or active recreational uses or passive recreational uses. Common Open Space shall not include public or private roads within the property. All Common Open Space may be subjected to easements for utilities, including sewer and waterlines, easements for ingress and egress as necessary for installation, maintenance and repair of utilities,

and may be subjected to easements for any encroachments arising from initial improvements. Common Open Space shall also be subject to easements as provided within the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Brandywine Homeowners Association of Cary, Inc.

29. DETACHED GARAGES. Detached garages are not allowed.

30. OUTSIDE RECREATIONAL EQUIPMENT. No portable basketball goals will be allowed. Permanent basketball goals will be allowed subject to architectural approval, however permanent basketball goals may not be attached to the dwelling and must have a clear backboard. Trampolines shall be allowed as long as the trampoline is screened and not visible from roadways within the community.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized officer, as of the _____ day of _____, 2007.

The Drees Company d/b/a The Drees Homes Company

By: _____
_____ President

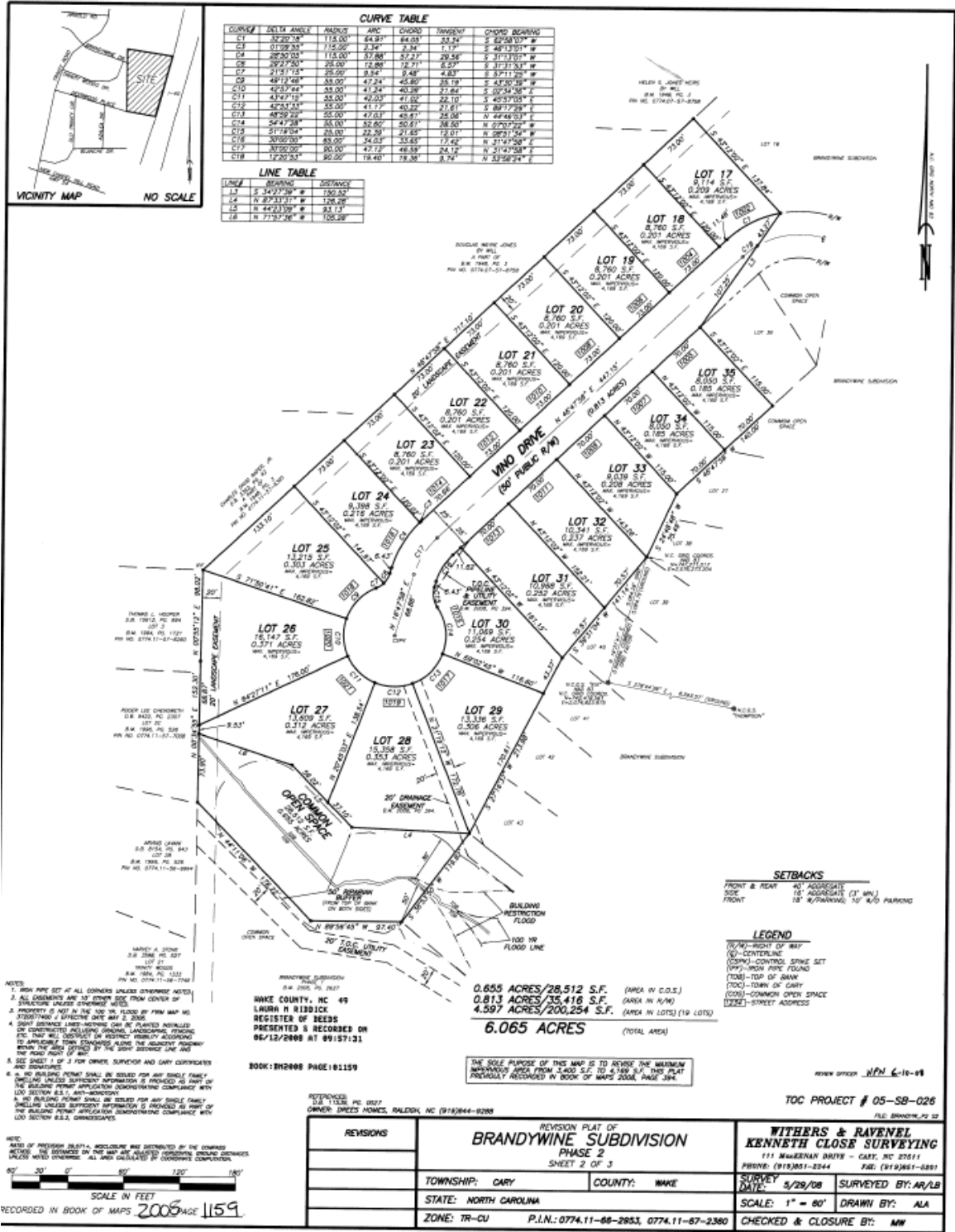
STATE OF NORTH CAROLINA _____ COUNTY OF WAKE

I, _____, a Notary Public for said County and State, certify that _____ President of **The Drees Company d/b/a The Drees Homes Company**, a Kentucky corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of the Company.

Witness my hand and official stamp or seal, this the _____ day of _____, 2007.

Notary Public: _____

My commission expires: _____



CURVE TABLE

CURVE	DELTA ANGLE	RADIUS	ARC	CHORD	INVERSE	CHORD BEARING
C1	32.20 34"	115.00	84.97	84.03	53.74	S 82°58'00" W
C2	01.02 34"	115.00	2.54	2.54	1.19	S 48°13'00" W
C3	25.20 03"	115.00	57.88	57.77	20.56	S 21°21'00" W
C4	29.27 30"	25.00	18.86	18.71	8.27	S 31°31'33" W
C5	21.51 14"	25.00	8.84	8.48	4.33	S 37°11'50" W
C6	49.72 48"	53.00	47.24	45.80	25.79	S 43°50'59" W
C7	42.37 44"	53.00	41.34	40.28	22.84	S 29°34'50" E
C8	43.97 19"	53.00	42.03	41.02	22.10	S 45°37'00" E
C9	42.33 53"	53.00	41.77	40.52	21.81	S 48°17'59" E
C10	48.29 50"	53.00	47.03	45.41	25.08	N 44°48'03" E
C11	54.47 28"	53.00	52.05	50.51	36.50	N 27°07'00" E
C12	51.79 04"	53.00	52.39	51.45	32.01	N 28°21'00" E
C13	30.02 50"	53.00	34.03	33.88	17.84	N 21°47'50" E
C14	32.02 00"	53.00	47.12	46.59	24.12	N 31°49'58" E
C15	32.02 00"	53.00	47.12	46.59	24.12	N 31°49'58" E
C16	32.02 00"	53.00	47.12	46.59	24.12	N 31°49'58" E
C17	32.02 00"	53.00	47.12	46.59	24.12	N 31°49'58" E
C18	32.02 00"	53.00	47.12	46.59	24.12	N 31°49'58" E

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 34°17'50" W	182.50
L2	N 87°33'00" W	126.25
L3	N 44°33'00" W	83.13
L4	N 77°32'00" W	106.25

NOTES:

- IRON PIPE SET AT ALL CORNERS UNLESS OTHERWISE NOTED.
- ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.
- PROPERTY IS NOT A 100' WIDE OR 100' DEEP FROM MAP NO. 270077400 J EFFECTIVE DATE MAY 2, 2006.
- EXISTING EASEMENTS ARE SHOWN ON THIS MAP AND ARE SUBJECT TO ANY EASEMENTS OR ENCUMBRANCES NOTED ON ANY RECORDING INSTRUMENTS FILED WITH THE COUNTY CLERK'S OFFICE.
- SEE SHEET 3 OF 3 FOR OWNER, SURVEYOR AND GARY CONTRACTOR AND SIGNATURES.
- NO BUILDING PERMIT SHALL BE ISSUED FOR ANY SINGLE FAMILY DWELLING UNLESS SUPPORTING INFORMATION IS PROVIDED AS PART OF THE BUILDING PERMIT APPLICATION DEMONSTRATING COMPLIANCE WITH LOCAL SECTION 8.2.1, ANTI-ENCROACHMENT.
- NO BUILDING PERMIT SHALL BE ISSUED FOR ANY SINGLE FAMILY DWELLING UNLESS SUPPORTING INFORMATION IS PROVIDED AS PART OF THE BUILDING PERMIT APPLICATION DEMONSTRATING COMPLIANCE WITH LOCAL SECTION 8.2.2, COMPLETION.

SCALE IN FEET
 0' 20' 40' 60' 80' 100' 120' 140'

RECORDED IN BOOK OF MAPS 2005 PAGE 1159.

WAKE COUNTY, NC 49
 LAURA H RIDBICK
 REGISTERED SURVEYOR
 PRESENTED & RECORDED ON
 06/12/2008 AT 09:15:31

BOOK: 812408 PAGE 161159

0.655 ACRES/28,512 S.F. (AREA IN C.O.S.)
 0.813 ACRES/35,416 S.F. (AREA IN R/W)
 4.597 ACRES/200,254 S.F. (AREA IN LOTS) (19 LOTS)

6.065 ACRES (TOTAL AREA)

THE SOLE PURPOSE OF THIS MAP IS TO REVEAL THE MAXIMUM UNIMPAIRED AREA FROM 1,400 S.F. TO 4,189 S.F. THIS PLAT PREVIOUSLY RECORDED IN BOOK OF MAPS 2006, PAGE 394.

SETBACKS

FRONT & REAR 40' AGGREGATE
 SIDE 15' AGGREGATE (3' W/1)
 FRONT 18' R/PARKING; 10' R/O PARKING

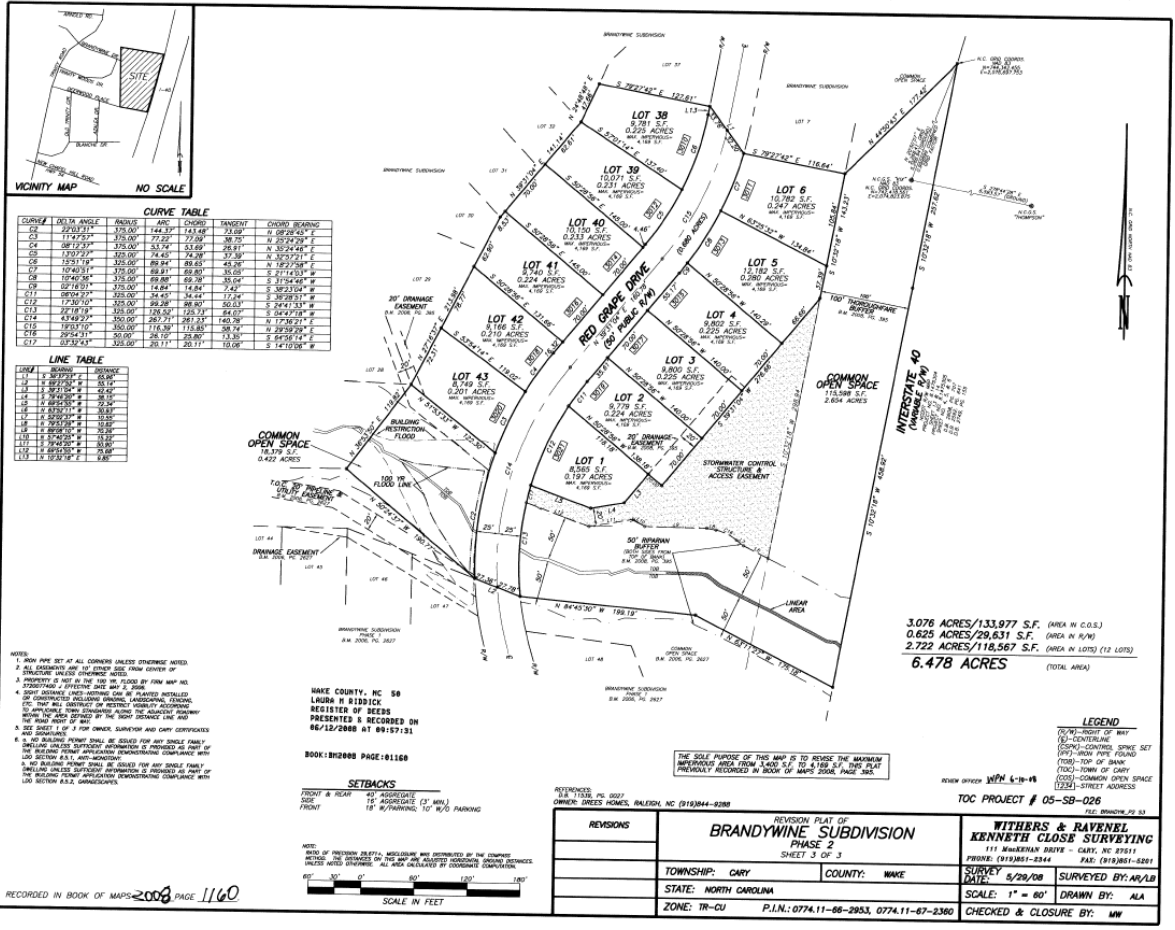
LEGEND

(1/4)"=RIGHT OF WAY
 (0)"=CENTERLINE
 (DASH)=CONTROL STRIKE SET
 (DASH)=IRON PIPE FOUND
 (TWO)=TOP OF BANK
 (TWO)=TOWN OF GARY
 (DASH)=COMMON OPEN SPACE
 (DASH)=STREET ADDRESS

WEN 6-10-08

TOC PROJECT # 05-SB-026

REVISIONS	REVISION PLAT OF BRANDYWINE SUBDIVISION PHASE 2 SHEET 2 OF 3	WITHERS & RAVENEL KENNETH CLOSE SURVEYING 111 MCKEAN DRIVE - CARY, NC 27511 PHONE: (919)851-2344 FAX: (919)851-6891
TOWNSHIP: CARY	COUNTY: WAKE	SURVEY DATE: 5/29/08 SURVEYED BY: AR/LB
STATE: NORTH CAROLINA		SCALE: 1" = 80' DRAWN BY: ALA
ZONE: TR-CU	P.I.N.: 0774.11-66-2853, 0774.11-67-2380	CHECKED & CLOSURE BY: MW



7.4 APPENDIX D. APPLICATION FOR ARCHITECTURAL/LANDSCAPING REVIEW

OWNER/AGENT APPLICATION FOR ARCHITECTURAL/LANDSCAPING REVIEW

Community		Date	
Owner's Name		Day Phone	
Home Phone		E-mail	
Address		Fax	
City, State, Zip			

If an agent is submitting on behalf of the owner, complete the following:

Name		Company	
Industry		Phone	

In accordance with the Declaration of Covenants, Conditions, and Restrictions for this Community application is hereby made for review and approval of the following described modifications: (brief description)

Submit application to:

CAS Inc. 1930 North Salem St, Ste 101 Apex, NC 27523-8204 Fax: 919.367.7715	<i>For office use only</i>	
	Approved	Date
	Not Approved	Date
	Approved as noted below	Date

It is hereby understood and agreed that approval of this application by the Architectural Committee does not constitute compliance with applicable North Carolina law or and County Ordinances. All permits must be applied for and posted as required and work should be completed by a licensed contractor.

In support of this application, the following items must be submitted:

One set of plans: The plans will show the following: plot plan, floor plan, exterior elevations, roof design, exterior materials and finishes, plant selections, (roof design, floor plan, landscaping plan, where applicable), and such other items as may be needed to reflect the character and dimensions of the modifications. Photos and brochures are great additions.

Summary: Written statement summarizing nature, style, setback, height and square footage of proposed modification, if applicable, and how the dimensions and nature of the proposed modification compare with the site specifications and other requirements set forth in the documents and whether any variance requests are necessary.

If the application is incomplete, the Arch. Committee will notify the applicant and the application will not be further considered until receipt of these materials. The approval process will not begin until all documents have been obtained by the Arch. Committee.

Your neighbors have the right to know of your future plans. Please obtain signatures from all property owners having common lot lines with your property along with property owners who reasonably view the improvement from their property.

Signature of Owner		Date	
Signature or Agent		Date	
Signature of Immediate Neighbors		Date	

Please check the following:

Is your plat plan included?	<input type="checkbox"/> Yes	Must include!
Is your fence or floor plan included?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is the elevation plan included?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are the exterior finish samples included?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other: Roofing Plan, Landscaping Plans, etc.	<input type="checkbox"/> Yes	<input type="checkbox"/> No