



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
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INSTRUMENT # 2011011096

STATE OF NORTH CAROLINA

SECOND ANNEXATION DECLARATION
OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR REGENCY AT BRIER
CREEK COUNTRY CLUB

COUNTIES OF WAKE AND DURHAM

THIS SECOND ANNEXATION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR REGENCY AT BRIER CREEK COUNTRY CLUB (the "Annexation Declaration") is made by TOLL NC, L.P., a North Carolina limited partnership, hereinafter referred to as "Declarant," and shall be effective upon the date of the recordation of this Annexation Declaration in the office of the Wake County Register of Deeds and in the office of the Durham County Register of Deeds (provided if the dates and times of recordation of this Annexation Declaration in the applicable offices of the Registers of Deeds are different, the later date and time shall be the effective date).

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Regency at Brier Creek Country Club was recorded in Book 13294 at Page 1043 in the office of the Wake County Register of Deeds and in Book 6089 at Page 21 in the office of the Durham County Register of Deeds, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Regency at Brier Creek Country Club recorded in Book 13851 at Page 2164 in the office of the Wake County Register of Deeds and in Book 6421 at Page 439 in the office of the Durham County Register of Deeds, as supplemented by that certain First Annexation Declaration of Covenants, Conditions and Restrictions for Regency at Brier Creek Country Club recorded in Book 13653, Page 2393 in the office of the Wake County Register of Deeds and in Book 6316, Page 191 in the office of the Durham County Register of Deeds ("First

Prepared by and return to:
Michael F. King, Esq.
K&L Gates LLP
4350 Lassiter at North Hills Avenue
Post Office Box 17047
Raleigh, North Carolina 27619-7047
RA-3032821 v3

Annexation Declaration") (as amended and supplemented from time to time, the "Declaration"); and

WHEREAS, in accordance with Article II, Section 2 and Article XIII, Section 13 of the Declaration, Declarant may cause certain additional property to be made subject to the terms and scheme of the Declaration by filing an Additional Declaration or Annexation Declaration (such terms are used interchangeably in the Declaration and herein) in the office of the Wake County Register of Deeds and in the office of the Durham County Register of Deeds containing a description of such additional property; and

WHEREAS, the Declarant Annexation Date has not expired and Declarant, as owner of that certain real property identified in Exhibit A attached hereto and incorporated herein by reference (the "Second Annexation Property"), desires to subject the Second Annexation Property to the covenants, conditions and restrictions of the Declaration in accordance with Article II, Section 2 and Article XIII, Section 13 of the Declaration; and

WHEREAS, the Second Annexation Property constitutes a part of the Additional Property or Annexed Property as such terms are defined in the Declaration, and such terms are used in the Declaration and herein interchangeably; and

WHEREAS, the Raleigh City Council has enacted Ordinance No (2010) - 791 TC 337 ("Stormwater Agreement Modification Ordinance"), which amends the requirements for existing stormwater replacement agreements required by the City of Raleigh ("City"). The Stormwater Agreement Modification Ordinance eliminates the existing privately-funded general replacement account and, in lieu thereof, substitutes a developer-funded replacement fund and a system of special assessments in the manner of Article 10 Chapter 160A of the North Carolina General Statutes, all in accordance with North Carolina Session Law 2009-293 and Ordinance No (2010) - 791 TC 337 and private assessments.

WHEREAS, as contemplated in Part B, Section 6 of the Declaration and in accordance with the Stormwater Agreement Modification Ordinance, the Declarant intends to subject the Second Annexation Property to the terms and conditions of a Declaration of Maintenance Covenant and Grant or Protection Easements for Stormwater Control Facilities which will be filed in the offices of the Registers of Deeds of Wake County and Durham County from time to time ("Maintenance Covenant") at such time as the construction drawings for the Stormwater Control Measures for the Second Annexation Property and the Stormwater Operations Maintenance Manual and Budget for such Stormwater Control Measures have been approved by the City. As the Maintenance Covenant is required by the Stormwater Agreement Modification Agreement, Declarant intends to subject the Second Annexation Property to its terms pursuant to Article II, Section 2 by this Annexation Declaration.

NOW, THEREFORE, BE IT RESOLVED, that the foregoing recitals are incorporated herein by this reference and the Declaration, the terms of which are incorporated herein by this reference, shall hereby be supplemented as follows:

1. Capitalized Terms. All capitalized terms not otherwise defined herein or by reference to the Maintenance Covenant shall have the meanings ascribed to them in the Declaration.

2. Annexation. In accordance with Article II, Section 2 and Article XIII, Section 13 of the Declaration, Declarant does hereby declare that the Second Annexation Property is and shall hereafter be held, used, transferred, mortgaged, sold, conveyed and occupied subject to the Declaration and the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration and to the jurisdiction of the Association pursuant to the terms of the Declaration and the Governing Documents, all of which shall run with the title to the Second Annexation Property and any part thereof and be binding upon all parties owning any right, title or interest in and to such Second Annexation Property or any part thereof, their heirs, successors and assigns. The Second Annexation Property is near, but is not a part of, the planned community known as the Brier Creek Country Club Community as established under the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community recorded on May 30, 2000, in Book 8596 at page 935 of the Wake County Public Registry. NO OWNER HAS ANY RIGHTS IN BRIER CREEK COUNTRY CLUB OR ANY OF THE COMMON AREAS OR FACILITIES THEREIN BY REASON OF OWNERSHIP OF A LOT IN REGENCY AT BRIER CREEK COUNTRY CLUB COMMUNITY EXCEPT AS EXPRESSLY PROVIDED IN THE DECLARATION. The Second Annexation Property and each Owner of a Lot is subject to a Master Declaration of Covenants, Conditions and Restrictions for Brier Creek recorded in Book 8002 at page 638 of the Wake County Public Registry and Book 2463 at Page 376 of the Durham County Public Registry (hereinafter referred to as the "Master Declaration") pursuant to that certain Forty-eighth Supplement and Amendment to Declaration of Covenants, Conditions and Restrictions for Brier Creek recorded in Book 12760 at page 55 of the Wake County Public Registry and the Supplement and Amendment to Declaration of Covenants, Conditions and Restrictions for Brier Creek dated September 20, 2007, and recorded in Book 5750 at page 175 in the Durham County Public Registry. Each Owner of a Lot will be obligated to pay assessments to the Master Association established under the Master Declaration.

3. Second Annexation Property Maintenance Covenant. In accordance with Article II, Section 2 of the Declaration and the Stormwater Agreement Modification Ordinance, the Second Annexation Property is hereby subjected to the terms and conditions of the Maintenance Covenant attached hereto on Exhibit B and Exhibit C and incorporated herein by reference. At such time as the construction drawings for the Stormwater Control Facilities for all or a portion of the Second Annexation Property and the associated Stormwater Operations Maintenance Manual and Budget for such facilities have been approved by the City, Declarant shall have the right without the joinder or consent of any other Person to subject the Second Annexation Property to one or more Maintenance Covenant(s) that include the Stormwater Operations Maintenance Manual and Budget applicable to the Stormwater Control Facilities therein defined.

5. Binding. This Annexation Declaration and all of the provisions hereof are and shall be real covenants running with Second Annexation Property and shall burden and bind the Second Annexation Property for the duration hereof. To that end, this Annexation Declaration shall be deemed incorporated in all deeds and conveyances hereinafter made by a Declarant or any other Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of Second Annexation Property shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Annexation Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of Second Annexation Property, such Person shall be deemed to have assented to this Annexation Declaration and all of the terms and provisions hereof.

6. Subordination. To protect the interests of the City of Raleigh and the public at large, any existing deeds of trust, mortgages, or liens encumbering the Second Annexation Property, other than property tax liens for the current tax year or governmental improvement assessment liens, must be subordinated to this Annexation Declaration. No such encumbrances exist on the Second Annexation Property, and, to affirm same, DECLARANT REPRESENTS THAT NO SUPERIOR DEEDS OF TRUST, MORTGAGES, OR LIENS (OTHER THAN PROPERTY TAX LIENS FOR THE CURRENT TAX YEAR OR GOVERNMENTAL IMPROVEMENT ASSESSMENT LIENS) ENCUMBER OR AFFECT THE SECOND ANNEXATION PROPERTY AT THE TIME OF THE EXECUTION AND RECORDING OF THIS ANNEXATION DECLARATION.

7. Effect of Annexation Declaration. Except as expressly provided herein, all covenants, conditions, restrictions and easements established by and contained in the Declaration shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Annexation Declaration to be executed and effective upon its recordation in the office of the Wake County Register of Deeds and in the office of the Durham County Register of Deeds (provided if the dates and times of recordation of this Annexation Declaration in the applicable offices of the Registers of Deeds are different, the later date and time shall be the effective date).

DECLARANT

TOLL NC, L.P., a North Carolina limited partnership

By: TOLL NC GP CORP., its general partner

By: Robert A. Schooley
Name: Robert A. Schooley
Title: Division President

WAKE County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: ROBERT A. SCHOOLEY

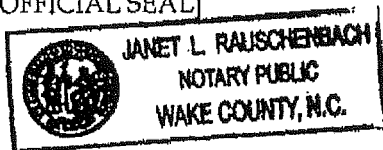
Name of Principal

Date: 4/14/11

Janet L. Rauschenbach
Official Signature of Notary Public

JANET L. RAUSCHENBACH Notary Public
Notary printed or typed name

[OFFICIAL SEAL]



My commission expires: 6/7/2015

EXHIBIT A

SECOND ANNEXATION PROPERTY

BEING all of that certain real property located in Durham County and Wake County, North Carolina, consisting of Lots 40-41, 63-65, 76-80, 108-116, and 138-146 and all of those certain tracts or parcels of land designated as "Common Space" as shown on that certain plat of survey recorded in Plat Book 186, Pages 229, 231, 233, and 235, Durham County Registry and recorded in Book of Maps 2010, Pages 887-890, Wake County Registry, which plat is referenced for a more particular description ("Plat 1").

AND BEING all of that certain real property located in Durham County and Wake County, North Carolina, consisting of Lots 113-114, 42-62, 66-75, 131-137 and 145-146, and that certain tract or parcel identified as "Future Development" as shown on that certain plat of survey recorded in Plat Book 187, Pages 221-225, Durham County Registry and recorded in Book of Maps 2011, Pages 208-210, Wake County Registry, which plat is referenced for a more particular description ("Plat 2"). Plat 1 and Plat 2 are collectively referred to herein as the "Plats."

EXHIBIT B

"Association" is defined as the entity organized and operated under the laws of the State of North Carolina as the homeowners' or property owners' association for the Property (if applicable).

"City" or **"City of Raleigh"** is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

"City Approval" is defined as the written approval of the City of Raleigh, as given by the Director of Planning or their deputy on the applicable document or plat.

"Code" is defined as the Raleigh City Code of Ordinances as it may be amended from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

"Declarant" is defined as the Person identified as the Declarant hereinabove and its successors and assigns, and includes any Person who has the powers of a Declarant established in a Subsequent Document, and its successors and assigns.

"Development" is defined as the real property approved for development by the City under the City of Raleigh Case or File Number shown on the first page of this Maintenance Covenant. The Property may be part or all of the real property that constitutes the Development.

"Governmental Authority" (or **"Governmental Authorities"**) is defined as the City, the County (or Counties, if applicable) in which the Property is located, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Property or any part thereof, and all applicable departments and agencies of any of them, whichever is/are applicable.

"Lot" or **"Parcel"** is defined as any portion of the Property, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Property, and which is not any of the following: dedicated street rights-of-way; or greenway, open space, or park lands owned in fee simple by the City.

"Maintain", "Maintenance", "Maintaining", or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

"Maintenance Covenant" is defined as this document, together with all exhibits and amendments to this document.

"Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, but excluding those having an interest in a Lot solely as security for the performance of an obligation or a tenant.

"Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Authority (including the City), or other entity.

"Parcel" is defined as **"Lot"**, above.

"Property" (or **"Properties"**) is defined as all of the real property which is subject to any part or all of the terms of this Maintenance Covenant, as described in **Exhibit A** of this Annexation Declaration and incorporated herein by reference.

"Registry" is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Property are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Property is situated.

"Responsible Party" is defined as an Association or a commercial Lot Owner that is responsible for Maintenance of the Stormwater Control Facilities following transfer of such responsibility from the Declarant to the Association or commercial Lot Owner by deed or easement.

"Stormwater Control Facilities" is defined as one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat or in a document) that serves the Property and which are located outside of public street rights-of-way and drainage easements accepted into public use by the City, including, but not limited to, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas (or similarly designated areas, such terms to be used interchangeably in this Maintenance Covenant), bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property.

"Stormwater Operations Maintenance Manual and Budget" or **"Stormwater Operations and Maintenance Manual and Budget"** is defined as that manual, however named, attached to and incorporated into this Maintenance Covenant as an exhibit that documents the requirements for the maintenance of the Stormwater Control Facilities and the projected annual costs for such maintenance.

"Subsequent Document" is defined as any document, map, or plat affecting or encumbering the Property or any portion thereof that is recorded in the Registry after this Maintenance Covenant is recorded in the Registry.

EXHIBIT C

Provisions from Maintenance Covenant

Article II

Obligations of the Raleigh City Code for Stormwater Control Facilities and Maintenance

1. Construction of Stormwater Control Facilities. The Declarant shall be responsible for the construction of the Stormwater Control Facilities and the Declarant will be responsible for the Maintenance thereof in accordance with the Stormwater Operations and Maintenance Manual and Budget prior to conveying control of the Stormwater Control Facilities, their appurtenances, and vegetation to the Responsible Party by deed or easement.

2. Maintenance of Stormwater Control Facilities. Following conveyance to the Responsible Party by the Declarant, Stormwater Control Facilities shall be Maintained by the Responsible Party in accordance with the Stormwater Operations and Maintenance Manual and Budget approved by the City's Public Works Department and attached and incorporated into the Maintenance Covenant. At all times, the Stormwater Control Facilities must comply with all applicable laws, ordinances, regulations, rules, and directives of Governmental Authorities, including, but not limited to, the Code, and the Stormwater Control Facilities must perform as designed. The Stormwater Operations and Maintenance Manual and Budget must meet all applicable requirements of the Code.

3. Location of Stormwater Control Facilities. The portions of the Property where the Stormwater Control Facilities are located, including all private drainage easements conveying stormwater over, under, across, through, and upon the Property to and from the Stormwater Control Facilities are shown on the Plats as "Private Drainage Easement Hereby Granted" or "Private Drainage Easement."

4. Drainage Easement. The Declarant dedicates, establishes and declares to and for the benefit of each Lot within the Property (or any portion thereof):

(a) the perpetual, irrevocable and non-exclusive easement, right and privilege to discharge, transport, and store stormwater from any portion of the Property into, over, under, across, through and upon the Stormwater Control Facilities and private drainage easements as shown on the Plats, and

(b) the perpetual, irrevocable and non-exclusive easement, right and privilege to use and Maintain Stormwater Control Facilities, including the right of access to and from the Stormwater Control Facilities, including private drainage easements and other portions of the Property as reasonably necessary to Maintain the Stormwater Control Facilities; and

5. Relocation of Drainage Easements.

(a) Private drainage easements situated on the Property may be relocated only by a written agreement signed by the Responsible Party that is responsible for Maintenance of the Stormwater Control Facilities associated with such private drainage easements and by the Owners of all portions of the Property on which the private drainage easement then is located, and by the Owners of all portions of the Property on which the private drainage easement is to be relocated. The consent of tenants, mortgagees, and beneficiaries and trustees under deeds of trust with respect to the affected portions of the Property shall not be required for the relocation to be effective. All relocations of a private drainage easement shall be accompanied with a letter sealed by a professional engineer licensed in the State of North Carolina stating that the relocated private drainage easement will not cause any adverse stormwater runoff unto the benefitted and/or adjoining properties.

(b) Notwithstanding anything herein to the contrary, no relocation of any private drainage easement shall be valid without prior City Approval. Any relocation without the required City Approval is void *ab initio*.

(c) Relocation of a private drainage easement is valid from the later of the time of either recording of the plat or other instrument of relocation in the Registry or such later date specified therein.

6. Stormwater Control Facilities Maintained by an Association.

(a) If an Association is responsible for the Maintenance of the Stormwater Control Facilities, then membership in the Association shall be mandatory for each Parcel served by the Stormwater Control Facilities and any successor Owner of the Parcel with membership being appurtenant to the Lot and running with ownership of the Lot. The Association shall have the power to levy assessments for the costs and expenses of Maintaining the Stormwater Control Facilities. All assessments required by this section that are levied against a Lot that remain unpaid shall become a lien on that Lot. (Calculation of the assessment charge shall be set forth in a subsequent recorded document.)

(b) Any Association designated as the Responsible Party for the Maintenance of Stormwater Control Facilities shall be established in accordance with Chapters 47C or 47F of the North Carolina General Statutes (or successor statutes) and the Association declaration shall conform to § 10-3073(b) of the Code (or its successor provision). Compliance with these terms shall be through Subsequent Documents executed and recorded by the Owners of the Property at a later date.

(c) If an Association is responsible for Maintaining the Stormwater Control Facilities, the costs and expenses of Maintaining any Stormwater Control Facilities (including any costs of complying with the terms of this Maintenance Covenant) shall be common expenses of the Association and shall include, without limitation, all costs for insurance premiums associated

with the Stormwater Control Facilities and any other costs listed in the operations and maintenance budget established in the Stormwater Operations and Maintenance Manual and Budget.

7. Stormwater Control Facilities Maintained by a Commercial Lot Owner.

(a) If a commercial Lot Owner is responsible for Maintenance of the Stormwater Control Facilities, said Owner is responsible for making all repairs and replacements of the Stormwater Control Facilities in accordance with the construction drawings approved by the City and the Stormwater Operations and Maintenance Manual and Budget.

(b) Each Parcel served by the Stormwater Control Facility and any successive Owner of any Parcel shall be subject to an assessment charge levied by the designated responsible commercial Lot Owner. The assessment charge shall include, without limitation, the actual costs for Maintaining the Stormwater Control Facility, all costs for insurance premiums associated with the Stormwater Control Facility, and other costs listed in the Stormwater Operations and Maintenance Manual and Budget. Calculation of the assessment charge shall be set forth in a subsequent recorded document. Any assessment charge levied against a Lot and remaining unpaid for a period of thirty (30) days or longer after the payment due date shall be delinquent and shall constitute a default of this Maintenance Covenant entitling the Lot Owner responsible for Maintenance of the Stormwater Control Facilities to bring an action at law against the defaulting party plus interest charges, together with all costs and expenses of collection incurred, such as without limitation, court costs and reasonable attorney fees actually incurred. Each Parcel Owner served by the Stormwater Control Facility shall have the right to Maintain, repair, and replace the Stormwater Control Facility if after forty-five (45) days written notice the commercial Lot Owner responsible for Maintenance, repair, and replacement fails to faithfully discharge its responsibility. The Parcel Owner doing the work shall have the same right as the designated commercial Lot Owner has to assess the other Lots served by the Stormwater Control Facility.

(c) At any time the commercial Lot Owner responsible for the Maintenance of Stormwater Control Facilities may assign its responsibilities and rights to a property owners association established in accordance with Chapters 47C or 47F of the North Carolina General Statutes or successor statutes, in which instance the Owners of the Parcels served by the Stormwater Control Facilities shall be members of the created property owners association.

8. Insurance. As part of the routine costs and expenses of Maintaining the Stormwater Control Facilities, the Responsible Party must procure and maintain liability insurance in an amount no less than \$1,000,000.00 for the protection of the Stormwater Control Facilities.

9. Penalties Associated with Failure to Maintain Stormwater Control Facilities. Operation and Maintenance of the Stormwater Control Facilities must comply with all relevant provisions of the Code. Failure to Maintain the Stormwater Control Facilities in accordance with the Stormwater Operations and Maintenance Manual and Budget and any applicable regulation of a Governmental Authority is a violation of the Code and may subject each Lot Owner and the Responsible Party to significant daily civil penalties and other enforcement actions by the City of Raleigh and/or other Governmental Authorities.

10. Joint and Several Liability. Each Owner shall be jointly and severally responsible for Maintenance of the Stormwater Control Facilities, including payment of any unpaid ad valorem taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Control Facilities and Lots benefited by those Stormwater Control Facilities, and including all interest charges thereon, together with the costs and expenses of collection incurred by themselves (or other collecting agent), including court costs and reasonable attorney's fees actually incurred. Each Owner has a right of contribution against all other Owners whose portions of the Property are served by the same Stormwater Control Facilities for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's pro rata share thereof, such pro rata share being determined either by other assessment provisions for Maintenance of Stormwater Control Facilities established in Subsequent Documents or by dividing the acreage of such Owner's portion of the Property served by the Stormwater Control Facilities by the total acreage of the portion of the Property served by the same Stormwater Control Facilities.

11. Permanently Protected Undisturbed Open Space Areas. Within any permanently protected undisturbed open space areas (and similarly designated areas) shown on any recorded plat of any portion of the Property, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in the Code), any removal of vegetation, any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse buffer permit from the City.!

Article III Rights Granted to City of Raleigh

1. Action for Specific Performance. Recognizing the consequences to the City of Raleigh of non-compliance with the obligations of this Maintenance Covenant, Declarant hereby grants the City of Raleigh the right to seek, in any court of appropriate jurisdiction, judicial action for specific performance of any of the obligations established within this Maintenance Covenant. This right of the City shall not limit any other remedies or enforcement options available to the City under this Maintenance Covenant, the Code, or any other applicable law, including later adopted ordinances or statutes that may supplement or supersede the requirements stated herein.

2. Grant of Easements.

(a) Declarant hereby dedicates and grants unto the City a permanent, non-exclusive and irrevocable easement over the Lots, Stormwater Control Facilities, and private drainage easements for the purpose of permitting City inspection and, if deemed necessary, as determined by the City, in its sole discretion, for Maintenance and other work on the Stormwater Control Facilities (the "Protection Easement").

(b) Declarant hereby dedicates and grants to the City a permanent, irrevocable, and non-exclusive right of ingress, egress, and regress over and across all public or private easements on the Property, including, but not limited to, private roads, for Maintenance and other work on the Stormwater Control Facilities (the "Access Easement"). The rights granted to the City in this subsection shall extend to employees, agents, and contractors of the City.

3. Use of Protection and Access Easements. The City, its officers, employees, contractors and agents may access the Property and enter the Stormwater Control Facilities for purposes of exercising the City's rights hereunder. This Maintenance Covenant shall in no way obligate the City to monitor and Maintain the Stormwater Control Facilities, and the City shall not be liable to any person, firm, partnership, company, corporation, governmental agency, or entity for the condition or operation of the Stormwater Control Facilities. Further, this Maintenance Covenant shall in no way diminish, limit, or restrict the right of the City to enforce any of its ordinances as permitted by law or to exercise any rights or powers granted to it.

4. City Right to Maintain and Repair Stormwater Control Facilities and Right of Reimbursement.

(a) If Stormwater Control Facilities serving any portion of the Property are not performing adequately or as intended or are not properly maintained or replaced, the City, in its sole discretion, may, after providing written notice to the Lot Owners and the Responsible Party, enter the Property and perform Maintenance of the Stormwater Control Facilities as is necessary to remedy the situation.

(b) The City shall be fully reimbursed for its costs of inspecting, monitoring, designing, constructing, repairing, reconstructing, replacing, and installing the Stormwater Control Facility or Stormwater Control Facilities. Such costs shall include the costs of administration, overhead, contracting, and public advertising associated with the work performed by the City pursuant to this Article.

In addition to any other rights the City has to be reimbursed for its costs, the City may levy an assessment against each Lot served by the noncompliant Stormwater Control Facility. No assessment will be levied by the City without prior notice to the affected Lot Owners. Any unpaid assessment levied by the City shall be, as allowed by law, a lien against any delinquent Lot.

5. City Right to Private Assessments. In addition to all of the other remedies set forth in this Maintenance Covenant, if the City has not been fully repaid for the work the City performs on any Stormwater Control Facility owned, in fee or easement, by a Responsible Party with the power to assess Lot Owners for Maintenance of the Stormwater Control Facility, the Responsible Party shall assign to the City the right to receive common expense assessments, including stormwater assessments. The Responsible Party shall designate and appoint the City as attorney-in-fact for the express and limited purpose of assessing and pursuing collection of such unpaid reimbursements owed to the City. No assignment of assessment rights shall become effective without sixty (60) days prior written notice to the Responsible Party, and, if applicable, the members of the Association.

6. No Public Adoption.

(a) The City's exercise of its rights under this Maintenance Covenant, or its abatement of a public nuisance, or its repair of unsafe structures does not constitute adoption of any Stormwater Control Facility by the City. The legal authority of the City is not intended to impede or prohibit the Responsible Party or any Lot Owners from taking all necessary actions to Maintain the Stormwater Control Facilities so that they function safely and perform the function for which they were created.

(b) The City is not obligated to monitor or Maintain any Stormwater Control Facility and the City shall not be liable to any person or entity for the condition or operation of any Stormwater Control Facilities.



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

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and/or cancellation.

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Document No.: 2011011096
DECL 15 PGS \$53.00
Recorder: SHARON M CEARNEL



2011011096



2010004698

WAKE COUNTY, NC 361
 LAURA M RIDDICK
 REGISTER OF DEEDS
 PRESENTED & RECORDED ON
 02/12/2010 AT 15:46:00

FOR REGISTRATION REGISTER OF DEEDS
 Willie L. Covington
 DURHAM COUNTY, NC
 2010 FEB 18 01:24:10 PM
 BK:6421 PG:439-446 FEE:\$32.00

BOOK:013851 PAGE:02164 - 02170

INSTRUMENT # 2010004698

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS
 FOR REGENCY AT BRIER CREEK COUNTRY CLUB**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR REGENCY AT BRIER CREEK COUNTRY CLUB (the "Amendment") is made and entered into as of this 11th day of February, 2010, by TOLL NC, L.P., a North Carolina limited partnership (the "Declarant").

WHEREAS, Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Regency at Brier Creek Country Club recorded in Book 13294, Page 1043 in the Office of the Wake County Register of Deeds and in Book 6089 at page 21 of the Durham County Register of Deeds (the "Declaration"); and

WHEREAS, Article XII, Section 3, of the Declaration provides that "for a period of thirty (30) years after the recordation of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable"; and

WHEREAS, Declarant deems it desirable to amend certain provisions of the Declaration, as set forth below.

NOW, THEREFORE, Declarant, in consideration of the foregoing recitals, does hereby declare as follows:

1. Defined Terms. All capitalized terms used herein, unless otherwise defined herein, shall have the meanings set forth in the Declaration, except that the term "Social Membership" is hereby changed to read "Club Membership" in each place where that term

Drawn by and mail to:
 Brian P. Evans, Esq. or Michael F. King, Esq.
 K&L Gates, LLP, PO Box 17047, Raleigh NC 27619
 VAULT BOX # 123

4819-5669-7861.02

Membership” is hereby changed to read “Club Membership” in each place where that term appears in the Declaration, and the term “Social Membership Assessment(s)” is hereby changed to “Club Membership Assessment(s)” in each place where that term appears in the Declaration.

2. Club Membership Assessments. Article V, Section 10, of the Declaration is hereby deleted and the following inserted in lieu thereof:

“Section 10. Club Membership Assessments. All Owners in the Development shall be members in the Club at such level or class of membership as may be determined by Declarant from time to time (currently, Dining Membership, as more particularly set forth in Article XI hereof), and shall be assessed the annual membership fees (the “Club Membership Assessment”) for such level or class of membership set by the Club Owner, which fees shall be used to pay for the improvement, use, operation, repair, replacement and maintenance of certain of the Club Facilities (as hereinafter defined), as determined by the Club Owner. Each Owner of a Lot or Dwelling Unit, by acceptance of a deed or other conveyance therefor, is hereby deemed to covenant and agree (and such covenant further shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot or Dwelling Unit), to pay to the Association (or to any Person which may be designated by the Association to receive such monies on behalf of the Association), in addition to the other assessments listed in this Article V, Club Membership Assessments as set forth herein. Where the Declaration refers to assessments generally, such provisions shall include the Club Membership Assessment, including but not limited to provisions regarding the creation of liens and personal obligations for assessments in Section 1 of this Article V and remedies for non-payment set forth in Section 2 of Article VI of this Declaration. All Club Membership Assessments must be remitted by the Association or the Person collecting them to the Club Owner.

The amount of the annual Club Membership Assessment shall be established by the Club Owner as of January 1st of each year. The Club Membership Assessment may be collected on a monthly, quarterly, annual or other basis, as determined by the Club Owner, and may be collected in advance. The rights, privileges and obligations of members related to use of the Club Facilities shall be set forth in a separate document or documents (the “Club Documents”) to be prepared by the Club Owner. In no event shall Declarant be obligated to pay any Club Membership Assessment.

The provisions of this Section 10, and of Article XI hereof, are in part for the benefit of and may be enforced by the Club Owner, and may not be amended, modified, or deleted without the prior written consent of Declarant, whether or not Declarant owns any Lots or other portion of the Property.”

3. The Club. Article XI of the Declaration is hereby deleted and the following inserted in lieu thereof:

ARTICLE XI

THE CLUB

“Section 1. Owners’ Covenants. With respect to the Club, the Club Property and the Golf Course, the Owners of any property in the Development shall be subject to the additional covenants that are set forth in this Article XI.

Section 2. The Club. The Club Property was developed by Toll at Brier Creek Limited Partnership, a North Carolina limited partnership, as a for-profit club and recreational area in conjunction with the development of the Brier Creek Country Club community (the “Country Club Community”). The Club Property (including, without limitation, the Golf Course, a clubhouse with exercise facility, tennis courts and swimming pools near the Development) (the “Club Facilities”) is available to each Owner at the discretion of the Club Owner. The Club Owner at any particular time shall have the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Facilities shall be used, if at all. By way of example, but not limitation, the Club Owner shall have the right to approve users and determine eligibility for use of the Club Facilities, to reserve use rights for future purchasers of property in the Development (other than a successor Declarant), to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Club Facilities, to transfer any or all of the Club Facilities or the operation thereof to anyone (including, without limitation, a member-owned or equity club) and on any terms, to limit the availability of use privileges, and to require the payment of a purchase price, a membership contribution, an initiation fee, dues and other charges for use privileges. All Owners in the Development shall be members of the Club in such level or class of membership as Declarant may from time to time determine. From and after the recording of this Declaration until Declarant executes and records an amendment to this Declaration designating a different level or class of membership, all Owners are required to be Dining Members of the Club. Declarant may, in its sole discretion, from time to time, change the level or class of membership required of Owners by executing and recording an amendment to this Declaration stating the new level or class of membership required. Each Owner purchasing a Lot, whether from Declarant or from any other party, after the recording of such an amendment, shall be required to be members in that level or class specified in such amendment. (Owners who acquired their Lots prior to such an amendment shall be required to be members only at that level or class in effect at the time of their acquisition of title to their Lot. However, their grantees shall be required to be members at the level specified in the most recent such amendment.) All Dining Members in the Club are entitled to use certain Club Facilities, as determined by the Club Owner, and as set forth in the Club Documents to be entered into between each Owner and the

Club Owner. All Owners shall be required to pay the Club Owner Club Membership Assessments as set forth in Article V, Section 10 hereof.

The Club Property is not part of the Property and is not subject to the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration. The Owners shall have certain perpetual non-exclusive easements over the Country Club Community as set forth in Article X Section 5 of that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community recorded in Book 8002 and Page 638 of the Register of Deeds for Wake County, North Carolina, as amended from time to time, provided, however, such easements, as they relate to the use of the common areas in the Country Club Community by Owners, shall be only as to those portions of the common areas necessary for such persons' use.

Declarant hereby reserves for itself and grants to the Club's members, employees, and visitors to the Club and Club Facilities a perpetual, non-exclusive easement, license, right and privilege of passage and use both pedestrian and vehicular over and across the Roadways and entranceways and other Common Areas as necessary during any use of the Club Facilities in connection therewith for the purposes of ingress, egress and access to such facilities. With respect to public streets, Declarant, the Club's members, employees, and visitors to the Club and Club Facilities may acquire licenses pursuant to any encroachment agreements with the City of Raleigh for such purposes subject to the requirements and procedures of the City of Raleigh.

Any disputes as to the extent of any of the above-described easements during the term of this Declaration shall be determined by Declarant in its sole and absolute discretion. Declarant reserves the right to impose upon the Property such other easements as are required for the enjoyment of the Club, or other facilities. Notwithstanding anything to the contrary set forth in this Declaration, for so long as required by the City of Raleigh, Declarant and/or the Association shall enter into separate encroachment agreements with the City of Raleigh which shall be recorded in the Office of the Register of Deeds for Wake County and shall govern the use of any encroachments over public street rights-of-way.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THE CLUB NOR ANY OF THE CLUB FACILITIES WILL BE COMMON AREA OR PROPERTY SUBJECT TO THIS DECLARATION, AND THE OWNERSHIP OF A LOT, DWELLING UNIT OR TRACT AND/OR MEMBERSHIP IN THE ASSOCIATION OR ANY ASSOCIATION DOES NOT IN ANY WAY CONFER ANY OWNERSHIP INTEREST IN OR ANY EASEMENT OR RIGHT TO USE THE CLUB, THE CLUB PROPERTY OR ANY CLUB FACILITIES OR AMENITIES, AND NO SUCH INTEREST, RIGHT, EASEMENT OR

RIGHT OF USE IS CREATED UNDER THIS DECLARATION BY IMPLICATION OR OTHERWISE. THE CLUB HAS MEMBERS FROM THE COUNTRY CLUB COMMUNITY AND MAY HAVE ADDITIONAL CLUB MEMBERS WHO ARE NOT OWNERS OR MEMBERS OF THE ASSOCIATION OR ANY ASSOCIATION. NOTWITHSTANDING THE PROVISIONS SET FORTH ABOVE, ALL OWNERS SHALL BE DINING MEMBERS OF THE CLUB AS PROVIDED IN THIS SECTION 2.

Section 3. Golf Tournament. During any tournament on the Golf Course which is part of the Club Facilities sponsored by the Club Owner ("Golf Tournament"), there shall be no unusual construction or any activity on any portion of the Property, whether or not contiguous to the Golf Course, that, in the reasonable judgment of the Club Owner, disturbs play in, or conduct of, the Golf Tournament, including the enjoyment thereof by spectators. Provided they comply with applicable governmental laws, rules and regulations, the Club Owner and its designees shall be entitled to restrict the public rights of way and access to other public areas contiguous to or near the Golf Course during the period of any Golf Tournament; provided, however, Owners, their guests and invitees, shall at all times have at least one means of ingress and egress from their property in the Development to a public right-of-way. All Owners acknowledge that during the Golf Tournament, parking facilities for spectators and guests may be located off the premises of the Golf Course, including within the Property (except for private driveways and spaces designated for the personal use of townhouse owners), and traffic congestion may occur.

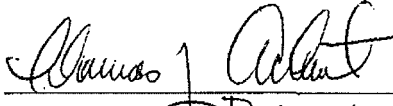
Section 4. Enforceability. The rights and obligations to implement the enforcement of the provisions of this Article XI and of those portions of the other covenants, conditions and restrictions herein contained that are directed to the protection of and enjoyment of the Club Property, the Golf Course and the orderly conduct of the Golf Tournament shall be and are hereby delegated to and become the sole responsibility of the Club Owner, its successors and assigns; provided, however, the Board shall also have the right, but not the obligation, to enforce any of the provisions of this Article XI."

4. Effect of Amendment. The Declaration is hereby modified to the extent set forth herein, but only to the extent set forth herein. All provisions of the Declaration not modified by this Amendment remain in full force and effect as hereby modified.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed as of the day and year first above written.

TOLL NC, L.P.

By: Toll NC GP Corp., its general partner

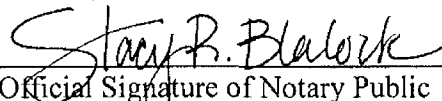
By: 
DIVISION President

STATE OF NORTH CAROLINA

COUNTY OF WAKE

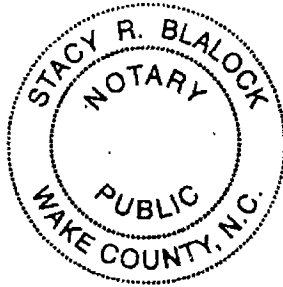
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: DIVISION PRESIDENT, Thomas
(name of principal(s)) J. Anhalt.

Date: 2.11.2010


Official Signature of Notary Public

Stacy R. Blalock
Notary printed or typed name

[OFFICIAL SEAL]



My commission expires: 11.28.2012



BOOK:013851 PAGE:02164 - 02170

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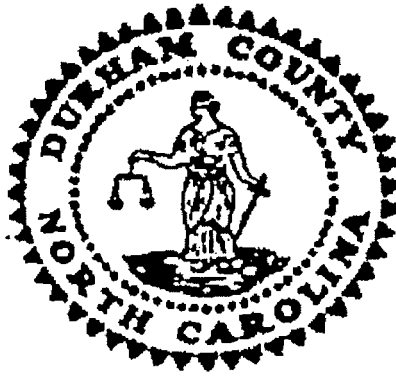


Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

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22.004-1/20/06



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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AMD 8 PGS \$32.00

Recorder: JENNIFER H SMITH



2010004698

WAKE COUNTY, NC 274
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
11/04/2008 AT 14:26:41

BOOK:013294 PAGE:01043 - 01130

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FOR

REGENCY AT BRIER CREEK COUNTRY CLUB

NOTE FOR TITLE EXAMINER: Article V, Section 9 of this Declaration requires a non-refundable initial contribution payment to be paid by each purchaser upon every purchase of a Lot, whether from Declarant or on resale. In addition, Article XI, Section 2 of this Declaration requires from each purchaser of a lot a purchase price, a membership contribution, an initiation fee, dues and other charges for the use of the Club Facilities in an amount established by the Club Owner.

NO OWNER SHALL DISPLAY, HANG, STORE OR EXHIBIT ANY SIGNS (INCLUDING WITHOUT LIMITATION POLITICAL SIGNS) OUTSIDE OF THE DWELLING ON ANY LOT OR IN ANY DWELLING SO AS TO BE VISIBLE FROM OUTSIDE THE LOT, OTHER THAN AS MAY BE PERMITTED BY THE RULES AND REGULATIONS, AS MORE PARTICULARLY SET FORTH IN ARTICLE VII, SECTION 7 OF THIS DECLARATION. THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

Drawn by and mail to:
Nina Shor, Esq.
K&L Gates (Vault Box # 123)
Hearst Tower, 47th Floor
214 North Tryon Street
Charlotte, NC 28202

**STATE OF NORTH CAROLINA
COUNTY OF WAKE AND DURHAM**

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR REGENCY AT BRIER CREEK
COUNTRY CLUB**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR REGENCY AT BRIER CREEK COUNTRY CLUB (this "Declaration") is made on the date of its recordation in the Wake County Public Registry, by TOLL NC, L.P., a North Carolina limited partnership (the "Declarant"). All capitalized terms used herein shall have the meanings set forth in Article I, Article XII, or elsewhere in this Declaration.

W I T N E S S E T H:

Declarant is the owner of that certain real property located in Wake and Durham Counties, North Carolina, and more particularly described on Exhibit A attached hereto and incorporated hereby by reference (the "Property"), which Property is being developed by Declarant (and one or more affiliate of Declarant) as a residential community known as Regency at Brier Creek Country Club (the "Development"). The Development will be a phased development and the initial phase currently is planned to include lots within two (2) "villages" -- the Village of Pebble Beach consisting of thirty (30) lots and the Village of Westchester consisting of approximately sixteen (16) Lots. The Village of Pebble Beach is currently planned to consist of no more than the thirty (30) detached single family dwellings which are part of the initial phase. The Village of Westchester is currently planned to consist of a total of one hundred twenty (120) detached single family dwellings. The Property is near, but is not a part of, the planned community known as the Brier Creek Country Club Community as established under the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community recorded on May 30, 2000 in Book 8596 at page 935 of the Wake County Public Registry. **NO OWNER HAS ANY RIGHTS IN BRIER CREEK COUNTRY CLUB OR ANY OF THE COMMON AREAS OR FACILITIES THEREIN BY REASON OF OWNERSHIP OF A LOT IN REGENCY AT BRIER CREEK COUNTRY CLUB COMMUNITY EXCEPT AS EXPRESSLY PROVIDED HEREIN.** The Property and each Owner of a Lot is subject to a Master Declaration of Covenants, Conditions and Restrictions for Brier Creek recorded in Book 8002 at page 638 of the Wake County Public Registry and Book 2463 at Page 376 of the Durham County Public Registry (hereinafter referred to as the "Master Declaration") pursuant to that certain Forty-eighth Supplement and Amendment to Declaration of Covenants, Conditions and Restrictions for Brier Creek recorded in Book 12760 at page 55 of the Wake County Public Registry and the Supplement and Amendment to Declaration of Covenants, Conditions and Restrictions for Brier Creek dated September 20, 2007 and recorded in Book 5750 at page 175 of the Durham County Public Registry. Each Owner of a Lot will be obligated to pay assessments to the Master Association.

Declarant desires to provide for the preservation of the property values, amenities and opportunities in the Project together with all easements, rights and appurtenances thereto and for the maintenance of the Property and improvements thereon, and to this end desires to subject the

Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described.

Although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may include easements, covenants, conditions and restrictions similar to those herein contained) may be imposed with regard to the various phases or sections of the Development, and that separate owner's associations may be established for some or all of the various phases of the Development, Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the Property, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or sections of the Development.

This Declaration creates a planned community under the North Carolina Planned Community Act (N.C. Gen. Stat. Chap. 47F) (the "Act").

NOW, THEREFORE, Declarant hereby subjects the Property together with all easements, rights and appurtenances thereto, to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property together with all easements, rights and appurtenances thereto shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of protecting the value, desirability and attractiveness of the Project. Subject to the above-described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

ARTICLE I
DEFINITIONS

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

Section 2. "Additional Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Wake County and Durham County, North Carolina, with regard to a certain Phase, section or portion of the Property, as more particularly described in Article II, Section 2 hereof and to the extent used in Article XIII of this Declaration, Additional Declaration is further defined by the term "Annexation Declaration".

Section 3. "Additional Property" shall mean and refer to those parcels of real estate located near or contiguous to the Property and within three (3) miles of any boundary of the Property which may be made subject to the terms of this Declaration in accordance with the provisions of Article II of this Declaration. To the extent used in Article XIII of this Declaration, Annexation Property is further defined by the term "Annexation Property".

Section 4. "Architectural Control Committee" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions described in the Declaration. There shall be one (1) Architectural Control Committee that shall be comprised of at least four (4) representatives and at least two (2) for each of Village of Pebble Beach and Village of Westchester. In the event additional "villages" are subjected to the terms of this Declaration, each village shall have equal number of representatives on the Architectural Control Committee.

Section 5. "Architectural, Design and Landscape Guidelines" shall have the meaning as set forth in Article VIII hereof.

Section 6. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association.

Section 7. "Association" shall mean and refer to REGENCY AT BRIER CREEK COUNTRY CLUB COMMUNITY ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns and to the extent used in Article XIII of this Declaration, Association is further defined by Article XIII of this Declaration.

Section 8. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws. During the Period of Declarant Control, the Declarant shall appoint the Members of the Board in accordance with the terms of the Bylaws. After the expiration of the Period of Declarant Control, the Board shall consist of at least two (2) Owners from each of the Villages.

Section 9. "Bylaws" shall mean and refer to the Bylaws for the Association, as same may be amended from time to time.

Section 10. "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

Section 11. "Club" shall mean and refer to the recreational and social club known as the Brier Creek Country Club located on the Club Property, as more particularly described in Article XI of this Declaration.

Section 12. "Club Facilities" shall have the meaning set forth in Article XI hereof.

Section 13. "Club Owner" shall mean and refer to the entity owning the Club and the Club Property (which as of the date hereof is an affiliate of Declarant).

Section 14. "Club Property" shall mean and refer to certain property located near the Development known as the Brier Creek Country Club Community. The boundary lines of the Club Property which contain the Golf Course are shown on certain plats in Book of Maps 2000, Page 1864-1867 recorded in the County of Wake, North Carolina. Club Property shall not be part of the Development or the Property as hereinafter defined, and shall not be subject to the terms and provisions of this Declaration.

Section 15. "Common Area" or "Common Areas" shall mean and refer to the Parking Area(s), Entrance Monument Signage and Landscaping Easements, Street Lights and the Roadways, including sidewalks, drainage facilities, pump stations, and other improvements located therein (prior to their acceptance for maintenance by the North Carolina Department of Transportation or other governmental entity), collectively, and any other property specifically shown and designated on any Plat as "Common Area," "Common Open Area," "Common Open Space," "Open Space," "COS," or designated as appurtenant easement rights, whether on-site or off-site easements for the benefit of the Property or any portion thereof, or other similar designation. The Common Areas shall be initially owned by the Declarant, and ultimately conveyed to the Association by the Declarant and owned by the Association, and except as otherwise provided herein, for the common use, benefit and enjoyment of the Owners (or in the case of "Limited Common Areas," as defined below, one or more but less than all of the Owners). The Declarant (and once the Common Areas are conveyed to the Association, then the Association) reserves the right, but not the obligation, to permit owners of other nearby communities to access and use the Common Areas, provided that such other owners of nearby communities pay their proportionate share for the use of such Common Areas unless such other owners of nearby communities are accessing the Common Areas for purposes of ingress to and egress from the Club Property in which event no payment for the use of the Common Areas shall be required. No land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment or construction or erection of any structure shall occur on any property specifically shown and designated on any Plat as "Open Space" without the express written consent of the Declarant (for so long as Declarant owns any portion of the Property), the Association and the applicable governmental authorities. To the extent the term "Common Area" or "Common Areas" is used in Article XIII of this Declaration, such terms shall be further defined as provided in Article XIII of this Declaration.

Section 16. "Declarant" shall mean and refer to Toll NC, LP, a North Carolina limited partnership, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any time. To the extent used in Article XIII of this Declaration the term "Declarant" shall have the meaning set forth in Article XIII of this Declaration.

Section 17. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions as same may be amended and/or supplemented from time to time as herein provided. To the extent used in Article XIII of this Declaration, the term "Declaration" shall have the meaning set forth in Article XIII of this Declaration.

Section 18. "Dwelling Unit" shall mean and refer to a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as an attached or detached dwelling for a single family. By way of illustration, but not limitation, each single-

family, detached house on a Lot, each townhouse or townhome, shall constitute a separate Dwelling Unit. Each Lot or tract containing vacant land intended for development or land on which improvements are under construction shall be deemed to contain one (1) Dwelling Unit. Upon issuance of one or more certificate(s) of occupancy for a structure or structures constructed on a Lot or tract, however, the Lot or tract on which such structure(s) are constructed shall be deemed to have the number of Dwelling Units as certificates of occupancy issued for such structure(s). The Club Property does not contain any, and shall be deemed to contain no, Dwelling Units.

Section 19. "Entrance Monument Signage and Landscaping Easements" shall mean and refer to the easements reserved by Declarant and granted to the Association in Article X hereof over, across and under certain areas of the Property and certain areas outside of the Property, for the installation and maintenance of entrance monuments, landscaping and related improvements for the Project, including without limitation certain areas located in the Village of Westchester for the maintenance of the lawns and landscaping, all as more particularly described in Article X.

Section 20. "Golf Course" shall mean and refer to the golf course facility constructed within the Club Property.

Section 21. "Guidelines" shall mean and refer to the Architectural, Design and Landscape Guidelines which addresses architectural, design, landscaping and stream buffer matters more particularly described in Article VIII hereof.

Section 22. "Improvement" shall have the same meaning as set forth in Article VIII hereof.

Section 23. "Initial Contribution" shall have the meaning set forth in Section 9, Article V hereof.

Section 24. "Limited Common Area" shall mean and refer to, singularly or collectively, as applicable, all Common Area designated by this Declaration, any Supplemental Declaration, any Additional Declaration, or any Map, as Limited Common Area for the use, improvement, enhancement or benefit of Owners of Lots in a particular section or phase located within the Property, or for the enhancement or protection of such portion of the Property, to the exclusion of Owners of Lots in other sections or phases within the Property. There may be Limited Common Area in one or more sections or phases located within the Property. Limited Common Area shall, for the purposes of this Declaration, be considered a sub-classification of Common Area and, except as may be otherwise provided herein, (i) all provisions of this Declaration relating to the rights, duties and obligations of the Association with respect to the Common Area shall apply to the Limited Common Area; and (ii) all provisions of this Declaration relating to the rights and obligations of Owners or Members with respect to Common Area shall, with respect to Limited Common Area, be exercised by or imposed upon only those Owners of Lots in phases or sections of the Development to which the particular Limited Common Area relates (as determined by the Declarant). As of the date hereof, there are no Limited Common Areas in the Project.

Section 25. "Lot" shall mean and refer to any numbered or lettered tract of land (excluding any Common Area) shown on any Plat which is a part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract of land is located including governmental restrictions. No tract of land shall become a "Lot" as that word is used herein until a Plat of the area in which the same is located is recorded in the Office of the Register of Deeds of Wake County and/or Durham County, North Carolina. To the extent used in Article XIII of this Declaration, the term "Lot" shall include the defined term "Lot" in Article XIII of this Declaration.

Section 26. "Maintenance Areas" shall have the meaning as set forth in Article X hereof.

Section 27. "Master Association" shall mean and refer to Brier Creek Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns, as the property owners association under the Master Declaration.

Section 28. "Master Declarant" shall mean and refer to Brier Creek Associates Limited Partnership, a Delaware limited partnership, the declarant under the Master Declaration as more particularly defined therein.

Section 29. "Master Declaration" shall mean and refer to that certain Master Declaration of Covenants, Conditions and Restrictions for Brier Creek recorded in Book 8002 at page 638 of the Wake County Public Registry and Book 2463 at Page 376 of the Durham County Public Registry.

Section 30. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 31. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot or Dwelling Unit.

Section 32. "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot or Dwelling Unit.

Section 33. "Occupant" shall mean and refer to any person occupying all or any portion of a Lot or the Property for any period of time, regardless of whether such person is a tenant of the Owner of such Lot or portion of the Property.

Section 34. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property (excluding any Common Area), and shall include Declarant as to any Lot or other portion of the Property owned by Declarant, but excluding those having such interest merely as security for the performance of an obligation.

Section 35. "Parking Area" shall mean and refer to the parking lot or lots which may be constructed over certain portions of the Common Area(s), or Limited Common Areas for the

common use, benefit and enjoyment of the Owners, their families, guests and invitees in the case of the Common Areas, and for the common use, benefit and enjoyment of such Owners, their families, guests and invitees as have the right to use, in the case of Limited Common Areas.

Section 36. “Period of Declarant Control” shall have the meaning set forth in Article IV hereof.

Section 37. “Person” shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), association, limited liability company, trust or other legal entity.

Section 38. “Phase” shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of Wake County and/or Durham County, North Carolina.

Section 39. “Plat” shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the Office of the Register of Deeds of Wake County and/or Durham County, North Carolina.

Section 40. “Project” shall mean and refer to the residential development being developed by Declarant on the Property and commonly known as Regency at Brier Creek Country Club.

Section 41. “Property” shall mean and refer to that certain real property located in Wake County and Durham County, North Carolina, and more particularly described on Exhibit “A” attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II hereof.

Section 42. “Protected Stream Buffer” shall have the meaning as set forth in Section 3(d) of Article VIII of this Declaration.

Section 43. “Roadways” shall mean and refer to the rights-of-way, roads, streets, entranceways and cul-de-sacs in the Project, as shown on the Plats, and any other rights-of-way, roads, streets, entranceways and cul-de-sacs on the Property, all to be privately maintained by the Declarant until accepted for maintenance by the North Carolina Department of Transportation or other governmental entity or until accepted for private maintenance by the Association, as set forth herein.

Section 44. “Sewer System” shall mean and refer to all pipes, drainage fields, repair areas and related equipment and apparatus installed for the benefit of a Lot for the disposal of sewage.

Section 45. “Site Plan” shall mean that certain draft plan prepared by ESE of North Carolina, PC, signed and sealed October 23, 2008, a copy of which is attached as Exhibit B and incorporated herein by reference. By attaching the Site plan hereto as Exhibit B and incorporating the Site plan by reference. EXCEPT AS REQUIRED BY THE CITY CODE, DECLARANT DOES NOT INTEND TO RESTRICT, AND SHALL NOT BE DEEMED TO

HAVE RESTRICTED, THE DEVELOPMENT OF THE PROPERTY TO DEVELOPMENT IN THE MANNER SHOWN ON THE SITE PLAN, OR TO HAVE COMMITTED TO THE CONSTRUCTION OF IMPROVEMENTS AS SHOWN ON THE SITE PLAN. THE SITE PLAN IS ILLUSTRATIVE ONLY OF THE CURRENT CONTEMPLATED DEVELOPMENT OF THE PROPERTY AND DECLARANT SHALL NOT BE OBLIGATED TO DEVELOP OR IMPROVE THE PROPERTY AS SHOWN ON THE SITE PLAN. THE SITE PLAN IS SUBJECT TO CHANGE BY DECLARANT WITHOUT NOTICE TO ANY OTHER PARTY.

Section 46. “Street Lights” shall mean and refer to any street lights owned or leased by Declarant or the Association and installed upon, along and/or over the rights-of-way of the Roadways, Parking Area(s) (if any), Maintenance Areas and Common Areas.

Section 47. “Supplemental Declaration” shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the office of the Register of Deeds of Wake County and/or Durham County, North Carolina, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II hereof.

Section 48. “The Village of Pebble Beach” shall mean that portion of the Property and/or the Additional Property located to the east of Page Road and north of Globe Road and shown as “Pebble Beach” on the Site Plan.

Section 49. “The Village of Westchester” shall mean that portion of the Property and/or the Additional Property located to the east of Page Road and north of Globe Road and shown as “Westchester” on the Site Plan.

Section 50. “Turnover Date” shall have the meaning set forth in Article IV hereof.

Section 51. “Water System” shall have the meaning set forth in Article VII, Section 20 hereof.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF
THE ASSOCIATION

Section 1. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Additions to the Property.

(a) For so long as the Declarant owns any portion of the Property, Declarant may cause Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by either filing of a Plat identifying the platted property as "The Regency at Brier Creek Country Club" or filing one or more Supplemental Declarations in the Office of the Wake County Register of Deeds and/or Durham County Register of Deeds, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in Article XII, Section 3 of this Declaration.

(c) In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Wake County and/or Durham County covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a property owners' association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not a property owners' association is formed pursuant to such Additional Declaration (i) the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration and (ii) the owners of such Property, including Additional Property shall have the right to use and enjoy the Common Areas in the Project, including but not limited to an easement for the purpose of ingress and egress between the Property, including the Additional Property and the Common Areas, provided that such owners of the Property, including the Additional Property pay their fair share of the costs associated with such use of the Common Areas unless provided otherwise in this Declaration.

(d) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, a Supplementary Declaration need only be executed by

Declarant and so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration, any Additional Declaration and/or the Bylaws or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE III
PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Except as otherwise provided herein, Declarant shall convey to the Association the Common Areas to be owned and maintained by the Association (to extent such areas can be conveyed in fee simple); provided, (a) with respect to any part of the Common Areas leased by Declarant (e.g., Street Lights), Declarant shall assign its rights and obligations under such lease to the Association, and (b) with respect to any part of the Common Area to which Declarant possesses easement rights (e.g., Entrance Monument Easement), Declarant shall assign its rights and obligations under such easement to the Association. Such conveyance and any such assignment shall occur at such time as Declarant shall determine, in its sole discretion, but in no event later than the expiration of the Period of Declarant Control. The Declarant reserves the right (but shall not be obligated) to construct within the Common Areas, among other things, (i) the Street Lights (which may be leased or purchased from a third party) and other lighting, signage and irrigation facilities, (ii) the Water System, (iii) the Roadways (including sidewalks, drainage facilities and other improvements), and (iv) certain additional facilities for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas (including Limited Common Areas) shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public (with the exception of the Roadways, which may eventually be accepted for public dedication and maintenance by the North Carolina Department of Transportation or other governmental entity).

At such time as Declarant shall convey the Common Areas to the Association, no acceptance or consent by the Association shall be necessary and the recordation of a deed from Declarant to the Association shall be deemed conclusive evidence of the Association's acceptance of such conveyance of such Common Areas in their "as-is, where is" condition, and subject to all matters of record, but free and clear of all deeds of trust or other monetary encumbrances.

Section 2. Owners' Rights to Use and Enjoy Common Areas/Limited Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, (other than Limited Common Area) (including but not limited to the owners of Additional Property or owners of property in other nearby communities permitted to use and enjoy the Common Areas as set forth in this Declaration as amended or supplemented from time to time), and those Owners to whom such rights are granted in this Declaration, including but not limited to owners of Additional Property or owners in other nearby communities permitted to use and enjoy the Limited Common Areas as set forth in this Declaration, as amended or supplemented from time to time, shall have a non-exclusive easement and right to use and enjoy

the Limited Common Areas, and such easements and rights shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

(a) the right of the Association and the Board to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners;

(b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment or charge against said Owner's Lot remains unpaid for longer than thirty (30) days and for a period longer than sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Declarant or the Association to grant or reserve utility, drainage and other easements across the Common Areas and to enter into and be bound by utility, drainage, and other on-site or off-site easements regarding the Property or a portion thereof;

(d) the right of the Association, subject to the provisions of the Act (Section 3-112), to encumber or convey all or any part of the Common Areas;

(e) the right of members of the Club to access the Club Property over the Roadways;

(f) the rights of licensees to use the Common Areas as vegetable gardens as contemplated by Section 21 of Article VII of the Declaration;

(g) the right of the Declarant and the Association to enter into stormwater agreements and easements on the Property and the Additional Property, if any, to address stormwater measures and to prepare and be bound by all operations and maintenance manuals and any other agreements required by the City of Raleigh in accordance with the requirements of the City of Raleigh; and

(h) any and all other applicable provisions of this Declaration.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas (including any Limited Common Area that such Owner has the right to use) and facilities located thereon to the members of his or her family, his or her guests, invitees, or his or her tenants.

ARTICLE IV THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws. In addition, as long as Declarant owns any part of the Property, Declarant shall be a Member of the Association.

Section 2. Classes of Voting Members. The Association shall have two (2) classes of voting membership:

(a) Class I. The Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Lot owned by such Association Member. 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 said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Lot owned by Declarant.

Section 3. Limited Common Area. With respect to matters specifically affecting Limited Common Areas (as contrasted with matters affecting other Common Areas or the Association), only those Class I Association Members (and the Class II Association Member) who own Lots in the particular section or phase of the Property to which such Limited Common Area relates shall be entitled to vote on and receive notice of matters affecting that particular Limited Common Area, and the quorum requirements with respect to any required votes affecting such Limited Common Area shall be based upon the number of Members entitled to vote on such matters and not based upon the entire membership of the Association.

Section 4. Period of Declarant Control. "Period of Declarant Control" means the period of time during which the Declarant shall at all times be entitled to appoint and remove the Association's Board of Directors and the officers of the Association, and during which the Class I Association Members shall have no right to nominate, elect, or remove, or exercise any vote to nominate, elect, or remove, the Board of Directors, such period of time beginning on the date that the Association is incorporated and ending at such time as Declarant does not own any portion of the Property, or at such earlier time as Declarant terminates such right by execution of a written instrument of termination. Anything to the contrary in this Declaration, the Bylaws, the Articles of Incorporation, or the Planned Community Act notwithstanding, if not sooner ended or terminated, the Period of Declarant Control shall end on December 31, 2037. The date upon which the Period of Declarant Control expires shall be the "Turnover Date." The Period of Declarant Control shall include the term "Declarant Control Period", as used in Article XIII of this Declaration.

During the Period of Declarant Control, the Board shall have the sole and exclusive authority to exercise all powers and rights of and to act in all instances on behalf of the Association, and the Members shall have no authority to exercise such powers or rights or to act by exercise of their votes, except as may be determined by the Board in its discretion, and except as provided with respect to the commencement of judicial or administrative proceedings as provided in Article XII, Section 5 of this Declaration, and those acts that the Planned Community Act or other applicable laws provide may not be undertaken unilaterally by the Board, such as, to the extent required, ratification of the budget as provided in Article V, Section 3 of this Declaration, borrowing of funds to pay operational costs of the Association as provided

in Article VI, Section (e) of the Bylaws and conveying fee simple title to all or any part of the Common Area as provided in Article VI, Section (t) of the Bylaws.

Section 5. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available during normal business hours upon reasonable notice and stated purpose. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 6. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. The managing agent may be an affiliate of Declarant. Any contract to the extent permitted by § 47F-3-105 of the Act may be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee after the expiration of the Period of Declarant Control.

Section 7. Maintenance. Prior to their acceptance for public maintenance, the Roadways shall be maintained by the Declarant, provided that the Association, in its sole discretion, has the right to reimburse the Declarant for maintenance costs until the Roadways are accepted for maintenance by the North Carolina Department of Transportation or other governmental entity or until the Roadways are accepted for private maintenance by the Association. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the Roadways shall conform to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance.

The Common Areas (including the Limited Common Area) and the Maintenance Areas, together with all utilities and easements located therein and not otherwise maintained by public entities or utilities or any other party as provided herein, shall be maintained by the Association as more particularly described below:

(a) Maintenance of the entryways to the Project shall include maintenance, repair and reconstruction, when necessary, of the entrance monuments, signage, irrigation, plantings, landscaping and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the entrance monuments and signage located thereon.

(b) Maintenance of the Parking Area(s) (if any) shall include repair, maintenance and reconstruction, when necessary, of the pavement and payment of the costs of lighting.

(c) To the extent not maintained by the North Carolina Department of Transportation or other governmental entity, as the case may be, the Association shall

maintain or cause to be maintained the swales and medians and associated landscaping and related improvements along and within the Roadways.

(d) The Common Areas (including the Limited Common Area) and Maintenance Areas and the landscaping thereon (if any), shall be clean and free from debris and maintained in an orderly condition, including any removal and replacement of any landscaping, utilities, or improvements located thereon.

(e) The Association shall not be responsible for the maintenance of any Lots or any portion of any Lot or the improvements within the boundaries thereof, including, without limitation, any Dwelling Unit. The Owners of such Lots shall be solely responsible for same, as more particularly set forth in Article XI, Section 1.

Section 8. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all or a portion of the Common Areas or Maintenance Areas and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the Annual Assessments, as hereinafter defined. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

Section 9. Liability Limitations. Neither Declarant, nor any Association Member, nor the Board, nor any officers, directors, volunteers, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

ARTICLE V

COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual, Additional, Supplemental Annual, Special, Special Individual Assessments, Social Membership Assessment and assessments under the Master Declaration. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance document, is deemed to covenant and agrees to pay to the Association Annual Assessments, Additional

Assessments, including, Additional Assessments for certain landscape maintenance as provided in Section 12 below, Supplemental Annual Assessments, Special Assessments, Special Individual Assessments, Social Membership Assessments and assessments due under the Master Declaration (collectively, the "Assessments"), established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, reasonable attorneys' fees, and fines imposed shall be a charge and a continuing lien upon the Lot, as the case may be, against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs, reasonable attorneys' fees, and fines imposed shall also be the personal obligation of the Owner, at the time when the assessment fell due, of the Lot, as the case may be, against which such assessment or charge is made. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, reasonable attorneys' fees, and fines imposed shall, as set forth above, be a continuing lien upon the Lot, as the case may be, against which such assessments or charges are made. Each Owner shall also be responsible for the payment of assessments in accordance with the Master Declaration. The Master Association, in its sole discretion, may elect to have the dues, fees, charges and assessments (or any of them) of the Owners billed and collected by the Association.

Section 2. Purpose of Annual Assessments. The assessments to be levied annually by the Association ("Annual Assessments") shall be used as follows:

- (a) to operate, repair, maintain, reconstruct (when necessary) and keep clean and free from debris the Common Areas but not including the Limited Common Areas) and (to the extent provided herein) the Maintenance Areas and any improvements (including landscaping) located thereon, including any necessary removal or replacement of landscaping;
- (b) to maintain and repair the Roadways to the standards of the maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance;
- (c) to maintain, operate, repair and reconstruct, when necessary, the entryways to the Project, including the entrance monuments, signage, irrigation, planting, landscaping and lighting located thereon;
- (d) to maintain and repair the swales not located on a Lot and medians, and associated street lights, landscaping and any related improvements along and within the Roadways to the extent not maintained by the North Carolina Department of Transportation or other governmental entity, as the case may;
- (e) to pay any costs associated with the lease and operation of the Street Lights, including, but not limited to, any monthly lease payments and utility costs;
- (f) to pay all ad valorem taxes levied against the Common Areas (but not including the Limited Common Areas) and any other property owned by the Association;

(g) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;

(h) to pay all legal, accounting, management, and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;

(i) to carry out all other purposes and duties of the Association, the Board of Directors and the Architectural Control Committee as stated in the Articles, the Bylaws and in this Declaration;

(j) to maintain contingency reserves for the purposes set forth in Article IV hereof in amounts as determined by the Board of Directors;

(k) to pay assessments to Brier Creek Property Owners Association, Inc. as set forth in the Master Declaration; and

(l) to pay all costs set forth in the definition of "Common Expenses" in Article XIII of this Declaration, if not otherwise referred to herein.

The expenses of the Association for the foregoing are sometimes referred to herein as "common expenses."

Section 3. Payment of Annual Assessments; Due Dates. Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth unless and to the extent otherwise provided in Article XIII of this Declaration.

Annual Assessments provided for herein shall commence as to all Lots shown on a Plat of any Phase of the Property as of the date of the conveyance of the first Lot in such Phase by Declarant to an Owner (other than Declarant) of such Lot. The Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the applicable billing period from the date of such conveyance. The Annual Assessment amount for each calendar year shall be in an amount as set by the Board of Directors, in accordance with the terms of this Article V. Annual Assessments shall be due and payable in advance on a yearly basis (or such other basis as is determined by the Board in its discretion) commencing on January 1 of each calendar year. The Board of Directors shall fix the amount of the Annual Assessment (and Additional Annual Assessments) as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment (and Additional Annual Assessments), as well as the amount of the payment due, to each Owner on or before January 5 of such calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. Except to the extent otherwise required by Article XIII of this Declaration, the budget is ratified unless at such meeting Members

exercising all of the votes in the Association reject the budget. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments. Except to the extent otherwise required by Article XIII of this Declaration, notwithstanding the foregoing, for calendar years beginning prior to the Turnover Date, in lieu of payment of Annual Assessments, Declarant may elect to pay for each such calendar year that portion of the annual expenses of the Association (excluding any reserves) which exceeds the total amount of the Annual Assessments paid by the Owners other than Declarant.

Section 4. Conveyance Pro-rations; Reduced Annual Assessments.

(a) With respect to any Lot conveyed by Declarant, the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot prorated based upon the number of days remaining in such installment period. With respect to any Lot conveyed by any Owner other than Declarant, the amount of the Annual Assessment applicable to such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(b) Except to the extent otherwise required by Article XIII of this Declaration, Declarant shall have the authority to reduce the Annual Assessment on any Lot on which no structure has been completed (i.e., no Certificate of Occupancy has been issued).

Section 5. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") for one or more of the following purposes: (i) paying the cost of the construction of any Common Area and/or Maintenance Area improvements which are not originally constructed by Declarant; or (ii) paying the cost of the reconstruction, repair or replacement of the Common Areas and/or Maintenance Areas, including any improvements located thereon, or (iii) paying the cost of preventative actions to protect the Property or any improvements located thereon, and to further reconstruct, repair or replace any portion of the Property or such improvements following an emergency, including but not limited to, floods, hurricanes, tornadoes, fires, acts of God or other naturally occurring phenomena; or (iv) paying the costs to acquire land and/or improvements from Declarant to be used as Common Area; or (v) any other similar purpose. Provided, however, (a) Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant except with Declarant's prior written approval, and (b) any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property).

Section 6. Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Owner ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or Maintenance Areas, and any improvements located thereon, whether occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other

charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 6 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 7. Collection Agent. At the option of the Board of Directors, any person or entity designated by the Board of Directors may act as collection agent for any and all assessments imposed by the Association and/or the Board against the Owners.

Section 8. Assessments Against Lots Owned by Declarant. Except to the extent otherwise required by Article XIII of this Declaration, the following shall apply.

Anything to the contrary set forth in this Declaration notwithstanding, the Annual Assessments and any Additional Annual Assessments on each Lot owned by Declarant shall be an amount equal to ten percent (10%) of the amount of the Annual Assessments on each Lot owned by an Owner other than Declarant.

In addition, Declarant shall be entitled to credit against any Assessments on Lots owned by Declarant any and all amounts which Declarant has paid directly for common expenses, or has paid or contributed to the Association for the Association's payment of common expenses.

Until the Turnover Date, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the Annual Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant pursuant to the immediately preceding paragraph), which may be either a contribution, an advance against future assessments due from the Declarant (if Declarant consents in writing to any such assessments), or a loan (as described below), in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Association budget. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

It is anticipated that until Declarant has sold a certain number of Lots (which number has not yet been determined, and which number is referred to herein as the "Break-even Number"), the Annual Assessments collected by the Association will not be sufficient to pay all common expenses on a current basis, but that the anticipated Annual Assessments collected after the Break-even Number of Lots has been sold will exceed common expenses. To fund this shortfall, Declarant reserves the right, but is not obligated, to make a loan (the "Assessment Loan") to the Association, as provided below, until cash flow from the Annual Assessments is sufficient to pay common expenses. If Declarant elects to make the Assessment Loan, then Declarant shall advance to the Association the amount by which the common expenses exceed the Annual Assessments collected for such year. The Association shall have the affirmative obligation to repay the Assessment Loan to the Declarant in accordance with the terms hereof, with no interest

thereon except as otherwise provided in this section. The Association shall use proceeds advanced to the Association only to pay the above described shortfall in common expenses. The Association shall repay the Assessment Loan to Declarant in monthly installments or as otherwise determined by Declarant commencing at such time as sales of Lots reach the Break-even Number, until the balance of the Assessment Loan has been repaid to Declarant in accordance with its terms; provided, however, an Assessment Loan shall in no event be repaid to Declarant later than December 31, 2019, unless earlier accelerated due to a default by the Association. After maturity, whether by acceleration or otherwise, if the Assessment Loan remains unpaid, the outstanding balance shall bear interest at the rate of fifteen percent (15%) per annum compounded monthly. Each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, is hereby deemed to covenant and agree (and such covenant further shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), that such an Assessment Loan is reasonable and was made by Declarant and accepted by the Association in good faith and at arm's length.

Section 9. Initial Contribution. The Association shall collect from each purchaser of a Lot (including both the initial purchaser from the Declarant and all resale purchasers) at settlement of such Lot a non-refundable contribution in an amount as may be determined by the Board from time to time, which payment shall be used by the Association for such purposes deemed appropriate or desirable by the Board. Such initial contribution shall not be considered as an advance payment of regular assessments.

Section 10. Social Membership Assessments. All Owners in the Development shall be social members in the Club and shall be assessed the annual social membership fees (the "Social Membership Assessment") as determined by the Club Owner, which fees shall be used to pay for the improvement, use, operation, repair, replacement and maintenance of certain of the Club Facilities (as hereinafter defined), as determined by the Club Owner. Each Owner of a Lot or Dwelling Unit, by acceptance of a deed or other conveyance therefor, is hereby deemed to covenant and agree (and such covenant further shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot or Dwelling Unit), to pay to the Association (or to any Person which may be designated by the Association to receive such monies on behalf of the Association), in addition to the other assessments listed in this Article V, Social Membership Assessments as set forth herein. Where the Declaration refers to assessments generally, such provisions shall include the Social Membership Assessment, including but not limited to provisions regarding the creation of liens and personal obligations for assessments in Section 1 of this Article V and remedies for non-payment set forth in Section 2 of Article VI of this Declaration.

The amount of the annual Social Membership Assessment shall be established by the Club Owner as of January 1st of each year. The Social Membership Assessment may be collected on a monthly, quarterly, annual or other basis, as determined by the Club Owner, and may be collected in advance. The rights, privileges and obligations of social members related to use of the Club Facilities shall be set forth in a separate document to be prepared by the Club Owner. In no event shall Declarant be obligated to pay any Social Membership Assessment.

Section 11. Additional Assessments. Declarant reserves the right, by recordation of Supplemental Declarations, Additional Declarations or other documents, to subject Lots located in one or more phases or sections in the Project provisions requiring the Owners thereof to pay additional annual and special assessments to the Association, or to an owners association established under an Additional Declaration, for the construction, repair, maintenance, alteration and replacement of, and addition to, Common Area including, without limitation, any one or more of the following: (i) Private Roads; (ii) specialized subdivision entrances or other features; (iii) specialized subdivision landscaping features; and (iv) exterior maintenance.

Section 12. Additional Annual Assessments for Certain Landscaping Maintenance. Each Owner of a Lot located within the Village of Westchester shall pay to the Association an additional annual assessment and such special assessments as may be levied by the Association to pay for the cost of providing the landscaping services described in Article XII, Section 12 to such Lots. The Additional Annual Assessments for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the applicable filling period from the date of such conveyance. The Additional Annual Assessment amount for each calendar year shall be in an amount as set by the Board of Directors, in accordance with the terms of Article V.

Section 13. Reduction of Assessments. Until the Turnover Date, at no time shall the (i) Annual Assessment amount owed by each Owner of a Lot or (ii) the services provided by the Association decrease from the prior year's (i) Annual Assessment amount or (ii) services unless the Declarant provides its prior written consent to such reduction.

Section 14. Water and Sewer. In addition to and without limiting the foregoing, the Association shall have the right to charge Owners for the payment of utility charges for water and sanitary sewer service to each Lot that is served by a common meter or meters. In the event submeters are installed with respect to each Lot for the purpose of measuring the actual water and sewer usage by the Owners of each Lot, the Association may charge Owners, either directly or through a third party billing agent, for the payment of the actual water and sewer charges showing as metered, plus any fees due to the billing agent. The Association shall have the right to collect and enforce Owner obligations under this Section as assessments under this Article V.

ARTICLE VI

GENERAL ASSESSMENT PROVISIONS

Section 1. Certificate Regarding Assessments. The Association or its agents shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association and its agents as of the date of its issuance.

Section 2. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment (or installment thereof) not paid by its due date as set forth herein shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner

shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner (or foreclose the lien against the applicable portion of the Property), and interest, late payment charges, fines, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment and assessment lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his or her property or the Common Areas or otherwise.

Section 3. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgage on a Lot. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to a mortgage foreclosure under any first Mortgage on a Lot, or any proceeding in lieu thereof, however, shall extinguish the lien (but not the personal obligation of the mortgagor or any prior Owner) of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual, Special or Special Individual Assessment (as the case may be), as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Annual Assessment to be in excess of the Maximum Annual Assessment permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any first Mortgage on a Lot.

ARTICLE VII RESTRICTIONS

Section 1. Residential Restrictions.

(a) Each Lot shall be used exclusively for single-family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and trailers, storage areas, parking areas and sales/marketing offices and trailers (and for related uses) for the Project. The Board may issue rules regarding permitted business activities. Leasing of a residence on a Lot shall not be considered a business or business activity.

(b) Except those to be utilized by Declarant as described hereinabove, no structure shall be erected, placed, altered, used or permitted to remain on any Lot and no exterior alteration (or interior alteration that can be seen from the outside of the dwelling unit) is permitted other than as are approved in advance in writing by the Architectural Control Committee pursuant to the Guidelines. Only Dwelling Units on the Lots may be occupied for use as a residence. Dwelling Units shall be occupied by no more persons than the maximum permitted by law. No Lot and no Improvements may be used for hotel or other transient residential purposes. Each lease relating to any Lot or any Improvements thereon (or any part of either thereof) must be for a term of at least six (6) months, must be in writing, and must provide that the tenant is obligated to observe and

perform all of the terms and provisions hereof applicable to such Lot and/or Improvements. In the event an Owner shall rent or lease his or her Lot or any Improvements thereon (or any part of either thereof), such Owner shall immediately give to the Association in writing: (i) the name of the tenant and the Lot rented or leased; (ii) the current address of such Owner; (iii) a true and complete copy of the lease or rental agreement; and (iv) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, and the Bylaws and that such tenant has been advised of any obligations he may have thereunder as a tenant. In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular Assessments to the Association, regardless of whether the obligation to pay Assessments has been assumed by the tenant in such lease or rental agreement.

Section 2. HVAC Equipment. Except for corner Lots, no air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling Unit on a Lot. Additionally, air conditioning and heating equipment and apparatus shall be screened from view from Roadways by landscape improvements, as more particularly provided in the Guidelines, and installation of air conditioning and heating equipment and apparatus in windows shall be prohibited.

Section 3. Exterior Lighting; Tennis and Other Sport Courts. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines. Tennis courts and sport courts may not be constructed on any Lot without the approval of the Architectural Control Committee. Night lighting of tennis courts and other recreational facilities on Lots is not permitted.

Section 4. Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration and except as expressly provided below, no fence or wall (including densely planted hedges, rows or similar landscape barriers) shall be erected on any Lot until the Architectural Control Committee has given its prior written approval of the color, size, design, materials and location for such fence or wall, such approval may be withheld in the Architectural Control Committee's sole discretion. In no event shall the homes in the Village of Westchester have fences of any material other than black wrought iron or aluminum. Any fences within the Village of Westchester must provide for a rear yard gate to permit the landscaping services set forth in Section 12, Article XII of this Declaration.

Section 5. Mail and Newspaper Boxes; House Numbers. Declarant shall install, at Lot Owner's expense, and each Lot Owner shall maintain, at Lot Owner's expense, a standard mailbox/newspaper box for such Owner's use on such Owner's Lot. No other mailbox or newspaper box shall be erected or maintained on any Lot. The location of the mailbox/newspaper box on a Lot must be approved in writing by the Architectural Control Committee unless installed by Declarant. House numbers may be displayed on the Dwelling Unit and/or mailbox only as approved by the Architectural Control Committee. With regard to attached Dwelling Units, Declarant, may install, at Declarant's expense and the Association shall maintain, from assessments collected by the Owners of the attached Dwelling Units, mail kiosks, containing mailboxes for portions of the Lots, which may be located on Common Areas as shown on the plats recorded or to be recorded as "Mail Kiosk" or similar designation. Declarant does hereby grant, establish, and declare easements over the portions of any and all Property

upon which mail kiosks are now or hereafter located for ingress and egress to and from and use of such mail kiosks, in favor of the Declarant, the Association, the Owners and their tenants, and the United States Postal Service, for the purpose of delivering, picking up, sending and receiving United States mail; and an easement for operation, maintenance, repair, and replacement of such mail kiosks in favor of Declarant and the Association.

Section 6. Animals. No animals, wildlife, livestock, reptiles or poultry shall be raised, bred or kept on any portion of the Property except that common domesticated animals may be kept as household pets, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. Under no circumstances shall any animals which raise the insurance premium or are deemed to be "dangerous animal" pursuant to the Association's policy of liability insurance be allowed to be raised, bred, or kept on any portion of the Property. Any excrement deposited by an animal on any portion of the Property shall be promptly removed and appropriately disposed of by the owner of such animal. All animals shall at all times whenever they are outside of a Dwelling Unit be on a leash or otherwise confined in a manner acceptable to the Board. The Association may restrict the walking of pets to certain areas. Commercial activity involving pets, including, without limitation, boarding, breeding, grooming or training is not allowed. The ability to keep a pet is a privilege, not a right. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from the Project. Pets may not be left unattended or leashed in yards or garages or on porches or lanais. Pursuant to rules and regulations, the Board may further regulate pets, including but not limited to number and type of pets. Animal control authorities shall be permitted to enter the Project and the Property to patrol and remove pets and wild animals. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless the same has been approved in writing by the Architectural Control Committee.

Section 7. Signs. No sign (including, without limitation, political signs), banner, commercial flag (except for flags of the United States of America and the State of North Carolina), billboard or advertisement of any kind, including without limitation, informational signs, "for sale" or "for rent" signs and those of contractors and subcontractors, shall be displayed on any Lot except for sign(s), banners(s), flags(s), and billboard(s) approved in advance by the Board of Directors, and by Declarant as long as Declarant owns any Lot or any portion of the Property. Declarant shall be entitled to erect and maintain signs and billboards advertising the Property, the Project or portions of either, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas or Maintenance Areas. If permission is granted by the Architectural Control Committee to any Owner to erect a sign on a Lot, the Board of Directors (and Declarant, as long as Declarant owns any Lot or any portion of the Property) reserve the right to restrict the size, shape, color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purposes. No sign shall be nailed or otherwise attached to trees, street light poles or streets signs.

Section 8. Temporary Structures; Structure Materials. No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage

building or other metal, fiberglass, plastic or canvas structure shall be erected on any Lot or attached to any residence. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used for storage, or for construction or sales offices.

Section 9. Utilities. All utilities and utility connections shall be located underground, including electrical, telephone and cable television lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be adequately screened as required by the Architectural Control Committee in accordance with the provisions of this Declaration.

Section 10. Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant or the Architectural Control Committee, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion.

Section 11. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or weed, metal scrap, or garbage, except that such material may be kept on the Lot or in areas of the Property designated for this purpose by the Declarant (in connection with its construction) or by the Board of Directors, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Owners shall place these containers for collection only in the designated areas and only on the day these refuse materials are to be collected; at all other times these containers must be stored in the garage of each Dwelling Unit. Empty containers shall be removed promptly after collection. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the rules established by the Architectural Control Committee.

Section 12. Combination or Subdivision of Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one Lot, then such Lots shall (except as provided herein) be considered as one Lot for the purposes of this Article VII upon the recordation in the Office of the Register of Deeds of Wake County and/or Durham County, North Carolina, of an instrument by such Owner expressing such intent (such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Article VII, and a copy of such recorded instrument shall be promptly delivered by such Owner to the Architectural Control Committee); and in each such case, Building Envelopes, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Architectural Control Committee. The Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. With respect to combined Lots, such Lots shall constitute multiple Lots for purposes of payment of assessments. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant and without compliance of all requirements of any applicable governmental authority. Provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant for any reason.

Section 13. Restricted Activities in Common Areas and Maintenance Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be permitted on the Common Areas or the Landscape Easements or other Maintenance Areas. No land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment or construction or erection of any structure shall occur on any property specifically shown and designated on any Plat as "Open Space" without the express written consent of the Declarant (for so long as Declarant owns any portion of the Property), the Association and the applicable governmental authorities. There shall be no obstruction of the Common Areas or the Maintenance Areas, or of any drainage channels or facilities thereon, nor shall anything be kept or stored in the Common Areas or the Maintenance Areas, nor shall anything be altered, or constructed or planted in, or stored upon, or removed from, the Common Areas or the Maintenance Areas, without the prior written consent of the Declarant and the Association. Motor vehicles including, but not limited to, mini-bikes, snowmobiles, and motorcycles, may not be driven on the Common Area by any Owner, or any occupant or guest of an Owner, except on paved driveways and parking areas designated by the Board of Directors. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area and/or the Maintenance Area caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees. Provided, however, the provisions in this paragraph shall not apply to Declarant in connection with Declarant's construction activities on the Property. Except for work done by the Declarant in connection with the construction and marketing of the Lots and the Property, nothing shall be built, caused to be built or done in or to any part of the Property which will alter or cause any alteration to the Common Areas or any Improvements located thereon without the prior written approval of the Association and the Declarant. The Declarant's approval shall be required until Declarant no longer owns any portion of the Property.

Section 14. Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot, other than in enclosed garages. All garage doors in the Project shall be kept closed except when in use.

Section 15. Rules of the Board. All Owners of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or Declarant for all damages and costs, including attorneys' fees.

Section 16. Recreational and Other Equipment. No recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be attached to the exterior of any Dwelling Unit or otherwise placed or kept on any Lot, except in accordance with the requirements as set forth in the Guidelines.

(a) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition. No portable basketball hoops/goals shall be permitted.

(b) Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain overnight within any front yard of any Lot, or within the side yards of any Lot located on a Roadway corner, and such play toys and other moveable equipment of any type shall be stored in a Dwelling Unit or an enclosed garage or in an enclosure specifically approved for such storage by the Architectural Control Committee

Section 17. Parking; Storage.

(a) Roadways, driveways, streets and other exterior parking areas on the Property shall be used by Owners, occupants and guests for fully operable, inspected and registered four wheel passenger vehicles, two wheel motorized bicycles and standard bicycles only. No recreational vehicles, vans (other than non-commercial passenger vans), mobile homes, trailers, boats, trucks (unless licensed as a passenger vehicle and less than three-quarter ton capacity) or commercial vehicles (whether or not registered as a commercial vehicle with the State Department of Transportation) shall be permitted to be parked on the Property, except on a day-to-day temporary basis in connection with repairs, maintenance or construction work on the Lot or if entirely enclosed in a Lot Owner's garage. No vehicles, trucks, vans, cars, trailers, construction equipment, etc. may be parked overnight on any Roadway within the Property.

(b) Commercial-use vehicles or trucks not involved with construction activity on the Property and having a carrying capacity and/or size designation greater than or equal to one ton shall not be permitted to park overnight on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot or on any street within the Property for more than ten (10) days unless stored in an enclosed garage.

(c) The Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient paved parking area for all vehicles normally parked and/or situated on or in regard to such Lot.

(d) No recreational vehicles or related equipment, including any boat, houseboat, trailer, all terrain vehicle, motor home or "camper" vehicle may be maintained, stored or kept on any portion of the Property, unless stored in an enclosed garage or in an enclosure specifically approved for such maintenance or storage by the Architectural Control Committee.

(e) No construction office trailers may be placed, erected or allowed to remain on any Lots during construction, except as approved in writing by the Architectural Control Committee. Provided, however, nothing herein shall prohibit Declarant from

erecting or moving temporary buildings or trailers onto Lots owned by Declarant to be used as construction or sales offices or to be used as parking or storage areas. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Architectural Control Committee.

Section 18. Nuisances. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's property. No Lot shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within any Lot, nor shall anything be done tending to cause discomfort, annoyance, or nuisance to any Person using any property within the Project. There shall not be maintained on any Lot any plants or animals or device or thing of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device (except for speakers as may be approved in writing by the Board), except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Dwelling Unit or any unimproved Lot unless required by law.

Section 19. Sewer System. Neither Declarant nor the Association nor their successors or assigns shall in any manner be liable for any interruption in Sewer Systems services. Furthermore, each Owner agrees to release and discharge the Declarant and the Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to the Sewer System.

Section 20. Water System; No Private Individual Wells, Irrigation Restrictions. All water supplies necessary to serve the Project (the "Water System"), and all water mains, pipes and other equipment necessary for the operation and maintenance of the Water System, shall be owned, operated, repaired and maintained by a public utility company duly licensed and operating under the authority granted by the North Carolina Department of Public Utilities Commission. All Owners shall connect to the Water System for domestic water service. The Water System shall be the sole provider of water supply to the Project, and no well may be dug or constructed on any Lot for the purpose of providing domestic water supply. The Water System and its providers, managers and operators may be subject to state or municipal regulations, laws and ordinances. The Water System and its providers, managers and operators may be subject to state or municipal regulations, laws and ordinances. Such regulations, laws and ordinances may have an impact on certain aspects of the Water System including, but not limited to, the fees charged, the method of delivery, the rights of the Owners, as well as the rights of the Water System providers or operators. These regulations and their impacts are beyond the Declarant's and Association's control. Neither Declarant nor the Association nor their successors or assigns shall in any manner be liable for any interruption in Water Systems services. Furthermore, each Owner agrees to release and discharge the Declarant and the

Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to the Water System.

Section 21. Clotheslines; Other Exterior Facilities; Vegetable Gardens. No clotheslines and no outdoor clothes drying or hanging shall be permitted in the Project, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Dwelling Units or any other Improvements, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of any Dwelling Units or any other Improvements, or any part thereof, nor relocated or extended, without the prior written consent of the Architectural Control Committee. Vegetable gardens may be located in the rear yard of the Lot and a community vegetable garden may be located in such other location, including without limitation, the Common Areas, as determined by the Association, in its sole discretion. Each calendar year the Association may provide licenses for a one year term, based on a calendar year, to each Owner to permit such Owner(s) to use a portion of the designated Common Area as a vegetable garden

Section 22. Antennae. To the extent permitted by law and subject to the federal telecommunications act, a DBS antenna, MDS antenna or transmission-only antenna may be erected on a Lot provided it is not greater than one (1) meter in diameter and prior approval of the Architectural Control Committee is obtained. No television broadcast antenna of any size or masts of any size attached to any of the above-listed antennas may be erected. Qualified antennae must be erected on the rear of the Lot or affixed to the rear of the Dwelling Unit, unless such placement impedes reception in which event such antenna may be erected in another location on the Lot provided that it is screened by landscaping or other material where reasonable.

Section 23. Grading and Drainage. No Person shall alter the grading of any Lot without prior approval pursuant to Article VIII of this Declaration. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swells, storm sewers, or storm drains. The Declarant hereby reserves for itself and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

Section 24. Removal of Plants and Trees. No trees or shrubs shall be removed without approval from the Architectural Control Committee in accordance with Article VIII of this Declaration; provided, however, no removal of plants or trees shall occur on any property specifically shown and designated on any Plat as "Open Space" without the express written consent of the Declarant (for so long as Declarant owns any portion of the Property), the Association and the applicable governmental authorities. In the event of an intentional or unintentional violation of this Section 24, the violator may be required by the Architectural Control Committee to replace the removed tree with one (1) or more comparable trees of such

size and number and in such locations as the Architectural Control Committee may determine necessary, in its sole discretion, to mitigate the damage.

Section 25. Wetlands, Lakes, and Other Water Bodies. All wetlands, lakes, ponds, and streams within the Property, if any, shall be water management areas only subject to fluctuations in water levels, and no other use thereof, including without limitation fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Property. No structures shall be constructed on or over any body of water within the Property, except such as may be constructed by the Declarant or the Association. No Person shall dump grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Property, except that fertilizers may be applied to landscaping on Lots and Common Area and other portions of the Property provided care is taken to minimize runoff. No activity shall take place which will violate any local, state or federal laws applicable to the Property. By acceptance of a deed to a Lot or Dwelling Unit, each Owner and Occupant acknowledges that the water levels of all water bodies may vary. There is no guarantee by the Declarant or the Association that water levels will be constant or aesthetically pleasing at any particular time. In fact, water levels may be non-existent from time to time.

Portions of the Property may be designated as "Wetlands" by the Corps of Army Engineers and may be shown as Wetlands or Streams on the recorded maps of Property. The areas designated as Wetlands or Streams must be maintained as Wetlands in compliance with any applicable laws, ordinances and regulations governing Wetlands until such time as changes to such laws, ordinances and regulations allow these areas to be maintained or developed in a condition or state other than as previously required of areas designated as Wetlands or Streams. Certain Lots currently or in the future annexed may have Wetlands or Streams located on the Lot(s) and additional restrictions will be imposed on such Lot(s) as required by North Carolina law and any other applicable laws, ordinances and regulations governing Wetlands or Streams.

Section 26. Yard Art, Exterior Sculpture, Above-Ground Pools, and Similar Items. No yard art, exterior sculpture, lawn furniture, fountains, birdhouses, birdbaths, other decorative embellishments, or similar items shall be permitted unless approved by the Architectural Control Committee in accordance with Article VIII of this Declaration, except for any such item installed by Declarant. Notwithstanding anything to the contrary contained herein, in no event shall above-ground pools be permitted.

Section 27. Underground Storage Tanks; Hazardous Substances. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other toxic product will be allowed anywhere in the Property. No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn, pool, and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, wetlands area, ponds or buffers. No activity shall be allowed which violates local, state or federal laws or regulations; provided however, the Board shall have no obligation to take enforcement action in the event of a violation.

Section 28. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling Units or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Architectural Control Committee. Any damage to the Roadways, curbs or sidewalks or any part of any Common Area, Maintenance Area or any utility system caused by an Owner or Owner's builder or such builder's subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and such builder's subcontractors on any portion of the Property shall keep such portion of the Property free of unsightly construction debris, in accordance with the construction rules established by the Architectural Control Committee (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Project to pay for the cost of repairing any damage to Roadways, curbs or sidewalks or any part of any Roadway, Common Area, Maintenance Area or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or such builder's subcontractors during the construction of Improvements.

Section 29. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances and other governmental rules and restrictions in regard to the Lot(s) or other portion of the Property owned by such Owner (including, without limitation, applicable zoning and watershed laws, rules, regulations and ordinances).

Section 30. Occupants Bound. All provisions of this Declaration, any Additional or Supplemental Declaration, the Master Declaration, the Bylaws and any and all rules and regulations, use restrictions or Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 31. Applicability to Declarant and Builders. The provisions of this Article VII are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Property. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work in the Property. The restrictions of this Article VII shall therefore not be binding upon Declarant in the performance of any of the work required in order to complete the development and construction of and within the Property. Furthermore, Declarant shall have the right, in its sole and absolute discretion, to exempt any Person purchasing a Lot from Declarant for the purpose of constructing a residence thereon for resale to a third party (such Person being hereinafter referred to as a "Builder") from any one or more of the provisions hereof during the period during which such Builder is constructing a residence thereon until such residence is sold by such Builder to a third party; and may

furthermore grant to any such Builder, in Declarant’s sole discretion, the right to exercise any one or more of the rights, easements and privileges reserved to Declarant under the terms hereof.

ARTICLE VIII
ARCHITECTURAL, DESIGN AND LANDSCAPING CONTROL

Section 1. General. Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot or on the Protected Stream Buffer, shall be commenced, erected or maintained on any portion of the Property, subject to the provisions of Article VIII, Section 7 hereof, until: (a) the Architectural Control Committee, appointed as hereinafter provided, has approved the plans, specifications and materials therefor and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Architectural, Design and Landscape Guidelines; (b) the fees set forth in or contemplated in this Article VIII have been paid; and (c) the contracts identified in this Article VIII have been executed. In addition to any standards established pursuant to this Declaration, Declarant may establish, by Additional Declarations, architectural and landscaping control standards, guidelines and restrictions in regard to various Phases or sections of the Property. Notwithstanding anything to the contrary contained in this Declaration, the provisions of this Article VIII shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas or Maintenance Areas and Declarant shall not need any prior approval from the Owners, the Association or otherwise prior to the construction of any Improvements. Declarant hereby expressly reserves the right to construct attached homes (for example, townhomes) on the Lots.

The Board may delegate to the Architectural Control Committee any powers or authority reserved or granted to the Board under this Article VIII.

Section 2. Composition of Architectural Control Committee. During the Period of Declarant Control, the members of the Architectural Control Committee shall be appointed by Declarant in its sole discretion. After the expiration of the Period of Declarant Control, the members of the Architectural Control Committee shall be appointed by the Board, in its sole discretion, which shall appoint at least four (4) members, two (2) members for each of the Village of Pebble Beach and the Village of Westchester. In the event additional “villages” are subjected to the terms of this Declaration, each village shall have equal number of representatives on the Architectural Control Committee. The Board shall delegate the responsibilities of the Architectural Control Committee established during the Period of Declarant Control to the Architectural Control Committee. Until the Architectural Control Committee is appointed by the Board, the Architectural Control Committee established during the Period of Declarant Control shall be responsible for all matters. The members of the Architectural Control Committee shall be appointed annually and will be composed of at least four (4) members. The elected members of the Architectural Control Committee must be Owners of property in the Project and such Owners shall only be appointed to the Architectural

Control Committee to represent the Village in which they reside (for example, only the Owner of a Lot in Pebble Beach Village may be appointed to the Architectural Control Committee to represent the interests of Pebble Beach Village). In the event of the death or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor, provided that such successor member is an Owner of a Lot in the same Village as the predecessor member. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee as described in this Article VIII.

Section 3. Architectural, Design, Landscape and Protected Stream Buffer Guidelines.

(a) The Architectural Control Committee shall, from time to time, publish and promulgate architectural, design, landscape and stream buffer guidelines (the "Guidelines"). The Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for Improvements (including landscaping). The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Article VIII, Section 8 hereof. In any event, the Guidelines may be revised and amended at any time by the Architectural Control Committee provided that they obtain the prior written approval of the Board (provided, however, after the Turnover Date the Guidelines shall not be revised or amended to allow less restrictive standards), and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of non-landscape Improvements) submitted to the Architectural Control Committee for approval.

(b) The portions of the Guidelines addressing landscaping Improvements may establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees. Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the Architectural Control Committee of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot or other portion of the Property shall be based upon the conformity of such plan or improvement with the Guidelines.

(c) The Architectural Control Committee is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

(d) The Architectural Control Committee may issue and amend the Guidelines from time to time and may publish and promulgate different Guidelines for different Phases, sections or portions of the Property subject to the prior written approval of the Board.

Section 4. Definition of "Improvements". The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; roofed structures; parking areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting or removal of trees); hedges; mass plantings; poles; driveways; ponds; lakes; changes in grade, slope or drainage patterns; site preparation; swimming pools; hot tubs; jacuzzis; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Control Committee.

Section 5. Enforcement.

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity in the Project and to help preserve values of properties in the Project. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Project and to Declarant, and to the values of their respective properties in the Project, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article VIII by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Architectural Control Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Control Committee or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Architectural Control Committee, the terms of the Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of

any unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article VIII. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Architectural Control Committee in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

Section 6. Failure of the Architectural Control Committee to Act. The Architectural Control Committee shall approve or disapprove any plans and specifications and other submittals or reject them as being inadequate or unacceptable within forty-five (45) business days after receipt thereof. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals or to reject them as being inadequate or unacceptable within forty-five (45) business days after receipt thereof, it shall be conclusively presumed that the Architectural Control Committee has disapproved such plans and specifications and other submittals. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

Section 7. Variances. Upon submission of a written request for a variance, which request shall set forth, among other things, the extraordinary circumstances applicable to a Lot giving rise to the need for a variance, the Architectural Control Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, the Architectural Control Committee may grant a variance only due to the existence of extraordinary circumstances applicable to a Lot, which extraordinary circumstance (i) has not been caused by the Owner of such Lot and (ii) materially impairs the ability of an Owner to construct a Dwelling Unit on such Owner's Lot. Any variance granted shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Architectural Control Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner. If a variance is granted, the

Owner receiving such variance shall comply with the more restrictive of the terms of the variance or applicable local, state or federal laws (including, without limitation, local zoning and development laws), and the granting of a variance shall not relieve any Owner from the obligation of complying with such laws.

Section 8. Fees Required by the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to the Architectural Control Committee or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the Architectural Control Committee and shall be set forth in the Guidelines.

Section 9. No Construction Without Payment of Fees. Notwithstanding anything contained in this Article VIII to the contrary, plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the Architectural Control Committee to be paid in connection with such Improvements, as provided in Article VIII, Section 8 above, shall have been paid to the Architectural Control Committee or Declarant as required.

Section 10. Notices and Submittals. Notices and submittals to the Architectural Control Committee shall be in accordance with the notice provisions set forth from time to time in the Guidelines.

Section 11. Limitation of Liability. No member of the Architectural Control Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article VIII. Neither the Architectural Control Committee nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Architectural Control Committee shall not be deemed or construed as a representation or warranty of the Architectural Control Committee, Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefor is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not

extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 12. Miscellaneous. Members of the Architectural Control Committee shall not be compensated for their services; provided, however, the Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the Architectural Control Committee, including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Article VIII, Section 5 hereof.

ARTICLE IX
INSURANCE; REPAIR AND RESTORATION; CONDEMNATION

Section 1. Board of Directors. The Board of Directors shall cause to be obtained and maintained at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) Fire. All improvements and all fixtures and personal property included in the Common Areas (including the Limited Common Areas) and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage. The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement. In addition to the provisions and endorsements set forth in Article IX, the fire and casualty insurance described herein shall contain the following provisions:

- (i) standard "Agreed Amount" and "Inflation Guard" endorsements;
- (ii) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;

(iii) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

(iv) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association or the Owners; (2) loss payments are contingent upon action by the carrier's directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners from collecting the proceeds.

(b) Public Liability. The Board shall also be required to cause to be obtained and maintained, to the extent obtainable, public liability insurance and officer's and director's liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as the Project, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, however, in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof, nor shall the amount of such officer's and director's insurance be less than \$1,000,000 unless such coverage is determined by the Board to be unreasonably expensive. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Association Members, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage and such officer's and director's liability insurance shall be in amounts not less than \$1,000,000.

(c) Fidelity Coverage. The Board shall also be required to cause to be obtained and maintained fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the

policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine from time to time desirable.

Section 2. Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Owners pursuant to the terms of this Declaration.

Section 3. Special Endorsements. The Board shall make diligent efforts to secure insurance policies that will provide for the following:

(a) recognition of any insurance trust agreement entered into by the Association;

(b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured and any insurance trustee; and

(c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner.

Section 4. General Guidelines. All insurance policies purchased by the Board shall name Declarant as an additional insured and be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A VIII" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 5. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance covered by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Maintenance Areas.

Section 6. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 7. Owner's Personal Property. Neither the Association nor Declarant shall be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, tenants, guests or invitees, located on or used at the Common Areas (including the Limited Common Areas). Further, neither the Association nor Declarant shall be responsible or liable for any damage or loss to any personal property of any Owner, his family, tenants, guests or invitees located on or used at the Common Areas (including the Limited Common Areas). Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property. Neither the Association nor Declarant shall be responsible or liable for any damage or loss to or of any equipment or other personal property of any Owner, his family, tenants, guests or invitees located on or used at the Parking Area or other Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owner's sole cost and expense, of any liability or other insurance for damage to or loss of such property.

Section 8. No Obligation to Insure Owners' Property. By virtue of taking title to a Lot within the Project, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any Dwelling Unit or other property located thereon.

Section 9. Security. The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support certain other activities within the Project designed to make the Project safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such measures or activities, then neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot or Dwelling Unit and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Declarant nor any successor of Declarant are insurers, and each such Owner, and Occupant of a Lot or Dwelling Unit and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

Section 10. Condemnation. Whenever all or part of the Common Area (including the Limited Common Areas) shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot or other portion of the Property, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Association and applied

to future operating expenses by the Board, in its sole discretion. Nothing herein is to prevent Owners whose Lots or other property are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area, Lots or other property without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, by the Board in its sole discretion.

Section 11. Master Insurance Program. Notwithstanding anything to the contrary contained herein, prior to the expiration of the Declarant Control Period, the Declarant reserves the right to include the insurance obligations of the Association within a master insurance program controlled by the Declarant and upon doing so, the insurance obligations provided for under this Declaration shall be deemed satisfied.

ARTICLE X

EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved herein, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Project, including, but not limited to, easements in favor of Declarant, the Association, the Owners, and all their family members, guests, invitees and tenants and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 1. Easements and Cross-Easements on Common Areas. Declarant, for itself, its designees and the Association, reserves the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, pond maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Project or any portion thereof.

Section 2. Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration, Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and tenants (except in the case of Limited Common Areas which would be in favor of those Owners whom have rights to the Limited

Common Areas), owners of lots in other nearby communities that may be granted rights to use the Common Areas, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration, any Supplemental Declaration, and any Additional Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 3. Limited Common Area Easements. Any improvements located on a Limited Common Area, if any, will be improvements for the sole benefit of the Owners of Lots in the Village where such improvements are located. The Owners of Lots in a Village where a Limited Common Area exists are hereby granted the right and easement to use such improvements, exclusively. As of the date hereof there are no Limited Common Areas.

Section 4. Right-of-Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, owners of lots in other nearby communities that may be granted rights to use the Common Areas by Declarant or the Association and to each Occupant of a Lot and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property and for the purpose of furnishing services and utilities and for the use of such facilities as the same are reasonably intended in accordance with the terms of this Declaration.

Section 5. Right of the Association and Declarant to Enter Upon the Common Areas and Maintenance Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Areas (including Limited Common Areas) and Maintenance Areas for the purposes of inspecting any construction, proposed construction, or Improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas and Maintenance Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Association or Declarant to maintain, repair, or construct Improvements which an Owner is required to maintain, construct or repair.

Section 6. Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent

necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees.

Section 7. Maintenance Areas. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

(a) Easements for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monument(s) for the Project, over, across and under those portions of the Property shown and designated as "Monument Easement" or other similar designation on the Plats and over, across and under those portions of property outside of the Property for which Declarant or the Association has secured monument signage and landscaping easements (herein referred to as the "Entrance Monument Signage and Landscaping Easements"). Declarant and/or the Association shall have the right to landscape and maintain the areas of the Property so designated as entryways to the Project, to erect and maintain entrance monument(s) thereon bearing the name of the Project, and to erect and maintain lighting for such monument(s), plantings, landscaping, irrigation systems and other improvements typically used for entryways.

(b) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, lighting, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" or other similar designation on the Plats (herein referred to as "Landscape Easements").

(c) Easements for the installation, maintenance, repair and removal of sidewalks, if any, over, across and under those portions of the Property shown and designated as "Sidewalk Easements" or other similar designation on the Plat (herein referred to as the "Sidewalk Easements").

(d) Easements for the installation, maintenance, repair and removal of storm drainage facilities within the areas shown as "S.D.E.," "Storm Drainage Easement," "20' Private Storm Drainage Easement" or other similar designation on the Plats.

All of the above-described areas and items shall herein be referred to as the "Maintenance Areas." The Association shall maintain the Maintenance Areas to a consistent standard of maintenance typical of a first-class development. Notwithstanding the foregoing, Association shall not be obligated to maintain the Maintenance Areas that are located on the Lots. The Association shall have the right, but not the obligation, to enter onto and maintain the Maintenance Areas that are located on the Lots. Each Owner shall be obligated to maintain all portions of any Maintenance Area located upon his or her Lot to the extent the Association does not maintain it.

Section 8. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats, including, but not limited to, those certain easements shown and designated on the Plats as:

- (a) "Utility Easement"; and
- (b) "Private Storm Drainage Easement" or "Drainage Easement" or "S.D.E."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns, and include, without limitation, storm drainage easements of variable width, whether or not depicted on a Plat, over the entire area within all ditches along any Roadway.

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along the Maintenance Areas for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, sewer system, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements.

Section 9. Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

Section 10. Easement Reserved for the Association and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article X and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

Section 11. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Project, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Association Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Project and the preservation and enhancement of Declarant's.

Section 12. No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

Section 13. Light, Air and View. No Owner shall have an easement for light, air or view over the Dwelling Unit or Lot of another Owner and no diminution of light, air or view by any building or improvement now existing or hereafter erected shall entitle the Owner or any other person to claim any easement for light, air or view within the Project.

Section 14. Landscape Maintenance Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, employees, agents and subcontractors, the nonexclusive perpetual easement at all times over certain areas of the Lots within the Village of Westchester designated as "Westchester Landscape Maintenance Easement" or other similar designation on the Plats for the purpose of maintaining the lawn and landscaping located on Lots within the Village of Westchester.

ARTICLE XI

THE CLUB

Section 1. Owners' Covenants. With respect to the Club, the Club Property and the Golf Course, the Owners of any property in the Development shall be subject to the additional covenants that are set forth in this Article XI.

Section 2. The Club. The Club Property was developed by Toll at Brier Creek Limited Partnership, a North Carolina limited partnership as a for-profit club and recreational area in conjunction with the development of the Brier Creek Country Club community (the "Country Club Community"). The Club Property (including, without limitation, the Golf Course, a clubhouse with exercise facility, tennis courts and swimming pools near the Development) (the "Club Facilities") are available to each Owner at the discretion of the Club Owner. The Club Owner at any particular time shall have the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Facilities shall be used, if at all. By way of example, but not limitation, the Club Owner shall have the right to approve users and determine eligibility for use of the Club

Facilities, to reserve use rights for future purchasers of property in the Development (other than a successor Declarant), to terminate any or all use rights; to change, eliminate or cease operation of any or all of the Club Facilities, to transfer any or all of the Club Facilities or the operation thereof to anyone (including, without limitation, a member-owned or equity club) and on any terms, to limit the availability of use privileges, and to require the payment of a purchase price, a membership contribution, an initiation fee, dues and other charges for use privileges. All Owners in the Development shall be social members of the Club. All social members in the Club shall be entitled to use certain Club Facilities, as determined by the Club Owner, and as set forth in a separate agreement to be entered into between each Owner and the Club Owner. All Owners shall be required to pay the Club Owner Social Membership Assessments as set forth in Article V, Section 10 hereof.

The Club Property is not part of the Property and is not subject to the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration. The Owners shall have certain perpetual non-exclusive easements over the Country Club Community as set forth in Article X Section 5 of that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community recorded in Book 8002 and Page 638 of the Register of Deeds for Wake County, North Carolina, as amended from time to time, provided, however, such easements, as they relate to the use of the common areas in the Country Club Community by Owners, shall be only as to those portions of the common areas necessary for such persons' use.

Declarant hereby reserves for itself and grants to the Club's members, employees, and visitors to the Club and Club Facilities a perpetual, non-exclusive easement, license, right and privilege of passage and use both pedestrian and vehicular over and across the Roadways and entranceways and other Common Areas as necessary during any use of the Club Facilities in connection therewith for the purposes of ingress, egress and access to such facilities. With respect to public streets, Declarant, the Club's members, employees, and visitors to the Club and Club Facilities may acquire licenses pursuant to any encroachment agreements with the City of Raleigh for such purposes subject to the requirements and procedures of the City of Raleigh.

Any disputes as to the extent of any of the above-described easements during the term of this Declaration shall be determined by Declarant in its sole and absolute discretion. Declarant reserves the right to impose upon the Property such other easements as are required for the enjoyment of the Club, or other facilities. Notwithstanding anything to the contrary set forth in this Declaration, for so long as required by the City of Raleigh, Declarant and/or the Association shall enter into separate encroachment agreements with the City of Raleigh which shall be recorded in the Office of the Register of Deeds for Wake County and shall govern the use of any encroachments over public street rights-of-way.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THE CLUB NOR ANY OF THE CLUB FACILITIES WILL BE COMMON AREA OR PROPERTY SUBJECT TO THIS DECLARATION, AND THE OWNERSHIP OF A LOT, DWELLING UNIT OR TRACT AND/OR MEMBERSHIP IN THE ASSOCIATION OR ANY ASSOCIATION DOES NOT IN ANY WAY CONFER ANY OWNERSHIP INTEREST IN OR ANY EASEMENT OR RIGHT TO USE THE CLUB, THE CLUB PROPERTY OR ANY CLUB FACILITIES OR AMENITIES, AND

NO SUCH INTEREST, RIGHT, EASEMENT OR RIGHT OF USE IS CREATED UNDER THIS DECLARATION BY IMPLICATION OR OTHERWISE. THE CLUB HAS MEMBERS FROM THE COUNTRY CLUB COMMUNITY AND MAY HAVE ADDITIONAL CLUB MEMBERS WHO ARE NOT OWNERS OR MEMBERS OF THE ASSOCIATION OR ANY ASSOCIATION. NOTWITHSTANDING THE PROVISIONS SET FORTH ABOVE, ALL OWNERS SHALL BE SOCIAL MEMBERS OF THE CLUB AS PROVIDED IN THIS SECTION 2.

Section 3. Golf Tournament. During any tournament on the Golf Course which is part of the Club Facilities sponsored by the Club Owner ("Golf Tournament"), there shall be no unusual construction or any activity on any portion of the Property, whether or not contiguous to the Golf Course, that, in the reasonable judgment of the Club Owner, disturbs play in, or conduct of, the Golf Tournament, including the enjoyment thereof by spectators. Provided they comply with applicable governmental laws, rules and regulations, the Club Owner and its designees shall be entitled to restrict the public rights of way and access to other public areas contiguous to or near the Golf Course during the period of any Golf Tournament; provided, however, Owners, their guests and invitees, shall at all times have at least one means of ingress and egress from their property in the Development to a public right-of-way. All Owners acknowledge that during the Golf Tournament, parking facilities for spectators and guests may be located off the premises of the Golf Course, including within the Property (except for private driveways and spaces designated for the personal use of townhouse owners), and traffic congestion may occur.

Section 4. Enforceability. The rights and obligations to implement the enforcement of the provisions of this Article XI and of those portions of the other covenants, conditions and restrictions herein contained that are directed to the protection of and enjoyment of the Club Property, the Golf Course and the orderly conduct of the Golf Tournament shall be and are hereby delegated to and become the sole responsibility of the Club Owner, its successors and assigns; provided, however, the Board shall also have the right, but not the obligation, to enforce any of the provisions of this Article XI.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Duty of Maintenance. Except for those portions, if any, of a Lot which the Association has elected to maintain under Section 12, Article XII of this Declaration or may elect to maintain or repair hereunder, the Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Supplemental Declaration, Additional Declaration or amendment to this Declaration, in accordance with the provisions of the Guidelines, and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Lots, shall include, but shall not be limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;

(b) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;

(c) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and

(d) Complying with all governmental health and police requirements.

In addition, such maintenance, as to improved Lots, shall include, but shall not be limited to, the following:

(a) Lawn mowing on a regular basis;

(b) Tree and shrub pruning;

(c) Watering by means of a lawn sprinkler system and/or hand watering as needed;

(d) Keeping exterior lighting and mechanical facilities in working order;

(e) Keeping lawn and garden areas alive;

(f) Removing and replacing any dead plant material;

(g) Maintenance of natural areas and landscaping in accordance with the Guidelines;

(h) Keeping parking areas and driveways in good repair;

(i) Repainting of Improvements; and

(j) Repair of damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot on which such Improvements are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Architectural Control Committee and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto) or remove such damaged Improvements and restore the Lot to its condition existing prior to the construction of such Improvements.

Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Lot shall commence only upon a Plat showing such Lot being recorded in the Office of the Register of Deeds of Wake County and/or Durham County, North Carolina and upon the conveyance of such Lot by Declarant. If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth herein, then the Board and Declarant, either jointly or severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which notice shall be deemed

to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in herein. Provided, however, this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through its authorized agent or agents, either jointly or severally, shall have the right and power to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and such Owner shall reimburse the Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special Individual Assessment against such Owner.

Section 2. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date this Declaration is recorded in the Office of the Register of Deeds of Wake County and Durham County, North Carolina. At the end of such thirty (30) year period, the easements, covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of a respective period, by a vote of no less than eighty percent (80%) of all votes entitled to be cast by the Association Members, there shall be adopted a resolution to terminate these covenants and restrictions. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting. The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant is described in Section 3 below.

Section 3. Amendment. Except as otherwise expressly provided herein and subject to the limitations hereinafter contained, this Declaration may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, if sixty-seven percent (67%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven

percent (67%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Association Members. Notwithstanding the terms of the preceding two sentences, Article III and Article XI of the Declaration may only be amended or modified at any time by a vote of no less than one hundred percent (100%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Association Members is required pursuant to this Section 3 shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record in the Office of the Register of Deeds of Wake County and Durham County, North Carolina; provided, however, such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Section 3.

Notwithstanding the terms of the immediately preceding paragraph of this Section 3, for a period of thirty (30) years after the recordation of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration such as amendments or modifications to controls, covenants, conditions restrictions, easements, guidelines, charges and liens to reflect the different characters of each of the Village of Pebble Beach and the Village of Westchester.

Section 4. Release of Property. For a period of thirty (30) years after the recordation of this Declaration, Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association, any Association Member or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the Office of the Register of Deeds of Wake County and/or Durham County, North Carolina. After the recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

Section 5. Enforcement; Litigation. The Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or the Guidelines. Sanctions may include reasonable monetary fines not to exceed the amount permitted by law day and suspension of the right to vote and to use any facilities within the Common Area (excepting drainage rights and rights of access to Lots) after notice and opportunity for a hearing and as otherwise permitted by law. In addition, the Association, through the Board, after notice and opportunity for a hearing, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or Lot in the event

that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Additional Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. Except as otherwise expressly provided in this Declaration, the Board may not file any claim on behalf of the Association without first obtaining from a licensed attorney a detailed cost-benefit analysis relating to such claim, which cost-benefit analysis must include at least the following: (a) the nature and extent of the claim and the prospects of winning or losing the claim; (b) the prospects of settling the dispute early; (c) the cost of prosecuting the claim; and (d) the effect of pending litigation on resales and on home refinancings in the Property. After distributing such cost-benefit analysis to all Owners, except as otherwise expressly provided in this Declaration, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Class I Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. The Board shall also attempt to meet with a potential defendant in order to investigate the possibility of any early settlement of the lawsuit or claim, and shall give the potential defendant notice of the claim or the potential litigation and a reasonable opportunity to cure the problem before the claim is filed. The immediately preceding two sentences shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments, charges or other fees hereunder, (c) proceedings involving challenges to ad valorem taxation, (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Project. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 6. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 7. Notice. Except as otherwise set forth herein expressly, whenever written notice to an Owner or Association Member (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner or

Association Member appearing on the records of Declarant or the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. Declarant's address as of the date of recording of this Declaration is 2310 T.W. Alexander Drive, Suite G, Raleigh, North Carolina 27617.

Section 8. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 9. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or other property located within the Project or the Common Area.

Section 10. Changes to Plans for the Project. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Project, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions, and any plans for the Project shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration.

Section 11. Prohibited Actions. Despite any assumption of control of the Board other than the Declarant, until the Declarant does not own any portion of the Property, the Owners and the Board are prohibited from taking any action which would discriminate against the Declarant, or which would be detrimental to the sale or leasing of homes owned by the Declarant, in the Declarant's sole discretion. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to the assumption of control of the Association by Owners other than the Declarant until the Declarant sells the last Dwelling Unit owned by it in the ordinary course of business.

Section 12. Landscape Maintenance of Village of Westchester. The Association shall maintain the lawns and landscaping located on Lots within the Village of Westchester. The costs of such maintenance shall be paid from the Additional Annual Assessments for certain landscape maintenance paid by the Owners of such Lots as provided in Section 12, Article V of this Declaration. Such maintenance shall include lawn mowing, fertilizing, edging, and replacement of diseased or dead shrubbery and trees, with such frequency as the Association shall determine is necessary to provide such Lots with an appearance consistent with a first class residential subdivision. The Association may discontinue the landscaping maintenance obligations described in this Section 12 with respect to the Village of Westchester only upon the written consent of Owners holding three fourths (3/4) of the votes entitled to be cast by the Association Members within the Village of Westchester and, during the Period of Declarant Control, the written consent of Declarant.

ARTICLE XIII RALEIGH CITY CODE REQUIREMENTS

PART A DEFINITIONS AND GENERAL REQUIREMENTS

Section 1. Definitions. As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in Section 3 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

(a) "Act" is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S.47F, with the particular section number following the G.S.47F reference (for example, G.S.47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

(b) "Annexation Declaration" is defined as a document, by whatever name denominated, that is recorded for the purposes of annexing Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

(c) "Annexed Property" is defined as all real property annexed or subjected (those two terms being used interchangeably herein) to any part or all of the terms of this Declaration following the initial recording of this Declaration in the Registry.

(d) "Association" is defined as the nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a nonprofit corporation

organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties. There may be one or more Sub-Associations (if applicable) with respect to the Properties. An example of a Sub-Association is a property Owners association for a townhouse development that is part of a cluster unit development which has an Association for the cluster unit development. All references herein to an Association that is, in fact, a Sub-Association, are deemed corrected accordingly.

(e) “Board” is defined as the board of directors of the Association, and is the Executive board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

(f) “City” or “City of Raleigh” is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

(g) “Code” is defined as the Raleigh City Code of Ordinances as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

(h) “Common Area” is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, however such real property is described on a plat or document recorded in the Registry. Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Areas include all of the following:

(1) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);

(2) Stormwater Control Measures;

(3) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;

(4) any site or facility designated a common area, common space, common property open space, open space common area, or other similar designation on any recorded plat or map of the Properties, or in this Declaration;

(5) any Code-required shared facility or Open Space for the Properties, except for Open Space owned by the City;

(6) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public

Maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and

(7) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

Common Area that is owned by or subject to being Maintained by a Sub-Association is Sub-Association Common Area, even if it is referred to in this Declaration or in any recorded plat of the Properties as Common Area instead of Sub-Association Common Area. Common Area, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Properties is Limited Common Area, and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Limited Common Area exists are subject to the same Code provisions as those applicable to Common Area. All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly. Sub-association Common Area, if any, owned by or subject to being Maintained by a Sub-Association for the benefit of fewer than all of the Owners and occupants of the applicable portion of the Properties is Sub-Association Limited Common Area, and such Sub-Association Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Sub-Association Limited Common Area exists are subject to the same Code provisions as those applicable to Sub-Association Common Area. All references herein or in any recorded plat of the Properties to Limited Common Area or Sub-Association Limited Common Area that is, in fact, Common Area or Sub-Association Common Area, are deemed corrected accordingly.

(i) "Common Expense" is defined as all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents and including specifically, but without limitation, all of the following: (Expenses for the Maintenance of Limited Common Area are Limited Common Expenses, which is a subcategory of Common Expense.)

(1) All sums lawfully assessed by the Association against its Members;

(2) Expenses of the Common Area and administration, inspection and Maintenance of the Common Area;

(3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;

(4) Expenses for acquisition, Maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;

(5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;

(6) Ad valorem taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;

(7) Fees or charges for utilities used in connection with the Common Area;

(8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;

(9) Allocations to reserve funds;

(10) Payments owed to the City pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant;

(11) Fees for services engaged by the Association;

(12) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity;

(13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;

(14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and

(15) Expenses agreed by the Members to be Common Expenses of the Association.

(j) "Declarant" is defined as and shall mean and refer to Toll NC, L.P., a North Carolina limited partnership, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title

or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

(k) "Declarant Annexation Date" is defined as the last date and time on which the Declarant has the right to annex real property to this Declaration without the consent or joinder of any Person other than the City, which date is 5:00 p.m. on December 31, 2037 (or, if no date is entered in the blank space, is 5:00 p.m. on the date that is seven (7) years following the date of the recording of this Declaration). The timeliness of an Annexation Declaration is determined by the date of its recordation as stamped by the Registry notwithstanding its date of execution.

(l) "Declarant Control Period" is defined as any period of Declarant control of the Association, as provided in 47F-3-103(d) of the Act and established in this Declaration (which may include a vote allocation that gives Declarant, by itself, sufficient voting power to elect members of the Board).

(m) "Declaration" is defined as the document, however denominated, which contains this Article, together with all exhibits and amendments to the document.

(n) "Fiscal Year" is defined as the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

(o) "Governing Documents" is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents (with respect to those portions of the Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

(p) "Governmental Entity" is defined as the City, the Counties of Wake and Durham, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

(q) "Include" or "Including" is defined as being inclusive of, but not limited to, the particular matter described, unless otherwise clearly obvious from the context.

(r) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-

of-way; Common Area; Open Space owned in fee simple by the Association; greenway or park lands owned in fee simple by the City.

(s) "Maintain", "Maintenance", "Maintaining", or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation. Provided, however, this definition is not applicable to Section 8 of Part A of this Article.

(t) "Member" is defined as each Person who or which holds membership in the Association.

(u) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(v) "Open Space" is defined as open space areas shown on preliminary subdivision plans filed with the City and delineated on any recorded plat of the Properties or the open space areas required by the Code or by the conditional use zoning of the Properties for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by the Association, a Sub-Association, or by the City. Open Space owned by the Association or a Sub-Association is Common Area or Sub-Association Common Area, as appropriate.

(w) "Operating Deficit" is defined as the difference between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements.

(x) "Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

(y) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the City), or other entity.

(z) "Properties" is defined as all of the real property now or in the future which may be subject to any part or all of the terms of this Declaration. The amount of

acreage of the Properties at the time of the recording and anticipated in the future to be subject to this Declaration is 99.52 acres.

(aa) "Registry" is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Properties is situated.

(bb) "Stormwater Agreement" is defined as any agreement recorded in the Registry among the Declarant, the Association, and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to such agreements. A Stormwater Agreement with the City includes the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution Contract and the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Lump Sum Replacement Contribution Contract (those names being subject to change from time to time under the Code).

(cc) "Stormwater Control Measures" or "Stormwater Control Facilities", such terms being used interchangeably herein and in the Stormwater Agreement, is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and City drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area or Limited Common Area, or Sub-Association Common Area or Sub-Association Limited Common Area, as applicable.

(dd) "Stormwater Operations Maintenance Manual and Budget" is defined as that manual; however named, attached to and incorporated into the Stormwater Agreement as an exhibit for the Maintenance of Stormwater Control Measures and the payment of the costs thereof.

Section 2. Applicability. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only

to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

Section 3. Conflicts.

(a) Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Provided, however, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(c) The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Annexation Declaration or any other Governing Documents.

(d) The provisions of this Declaration control over any inconsistent provisions of any other Governing Documents, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the North Carolina Nonprofit Corporation Act shall control.

Section 4. Amendment of Declaration. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment. When City approval of an amendment is required by the Code or by a provision of this Declaration (including this Article), City approval shall be evidenced by the signature of the Raleigh City Attorney or his/her Deputy on the recorded original or copy of the amendment. Any amendment of this Article of this Declaration must have prior City approval. Any amendment of this Article or any other provision of this Declaration that requires City approval is void *ab initio* if recorded without the required City signature.

Section 5. Assessments.

(a) Obligation for Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) stormwater assessments created and established pursuant to Part B of this Article; (4) special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (7) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.

The Association at all times has the right to include as part of the assessments or other charges applicable to the Properties and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by the Code either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payment to the City.

(b) Purpose of Assessments. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

(c) Budgets; Amount of Assessments. The Association is at all times empowered to levy assessments against the Lots and the Owners of Lots within the Properties for the payment of Common Expenses.

Notwithstanding the foregoing, for calendar year 2009, the Annual Assessment per Lot is \$1,053.00 inclusive of the Stormwater Assessment but exclusive of the Additional Annual Assessment which is set forth in Section 12 of Article V of this Declaration regarding the Lots within the Village of Westchester. The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present 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; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

(d) Effect of Non-Payment; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charge on the Owner's Lot as provided in G.S.47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S.47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

(e) Classes of Membership. This Declaration may allow different classes of membership in the Association and may allow different levels of annual assessments and other assessments to be imposed for different classes of membership.

(f) Declarant's Obligation to Fund Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

(g) Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the assessments and other charges against a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

Section 6. Membership and Governance.

(a) Membership. The Declarant and every Owner within the Properties shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon termination of ownership, an Owner's

membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot.

(b) Members' Rights of Use. Each Member and lawful occupant in the Properties shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right rights of ingress and egress to and from all Common Areas throughout the Properties, subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act. But, the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. If a Lot is owned by multiple Owners, the votes allocated to that Lot shall be cast only in accordance the agreement of a majority in interest of the multiple Owners unless otherwise provided in the Governing Documents. A majority agreement is conclusively presumed if only one of the multiple Owners casts the votes allocated to that Lot, unless any of the other Owners of the Lot protest such co-Owner's vote promptly to the Person presiding at the meeting.

(d) Proxies. Votes may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner, and delivered to the Secretary of the Association or to the property management company authorized by the Board to receive proxies prior to the opening of the meeting for which it is first intended to be used. No proxy shall exceed a term of eleven (11) months from its date except as otherwise provided in the Act. Revocation of a proxy shall be made by actual notice to the Person presiding over the Association meeting.

(e) Quorum. Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 7. Permanently Protected Undisturbed Open Space Areas. Within any permanently protected undisturbed open space areas shown on any recorded plat of the

Properties, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code), any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse permit from the City. Permanently Protected Undisturbed Open Space may or may not be Open Space as defined in this Declaration.

Section 8. Tree Conservation. The Association shall have a conservation easement for the planting of trees and for the protection and Maintenance of the trees situated within any tree conservation areas shown on any recorded plat of the Properties. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in tree conservation areas or in permanently protected undisturbed open space areas shown on recorded plats of the Properties without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the City and of the Association, enter tree conservation areas to perform active tree protection measures (as defined in the Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees, provided, however, that Association consent shall not be required, unless otherwise required by other provisions of this Declaration or Governing Documents, if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

Section 9. Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall procure and Maintain (i) hazard insurance on the Common Area, insuring against all risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use ownership or Maintenance of Common Area. The Association shall obtain and Maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Common Area and other property of the Association or otherwise is in the best interests of the Association. The premiums for such insurance shall be a Common Expense paid from the annual assessments as established pursuant to this Declaration.

Section 10. Indemnification. No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.

Section 11. On-Street Parking. Any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

Section 12. Sight Triangles. No sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet and eight feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area

designated on a recorded map of the Properties as a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

Section 13. Annexed Property. Real property which was not part of the City-approved development, or real property that was part of the City-approved development but which was not subjected to this Declaration at the time of its initial recording, may be annexed to this Declaration and made part of the Properties as Annexed Property, provided that all of the following conditions are met with respect to the real property to be annexed:

- (a) the Annexed Property is contiguous to the Properties or directly across a street from the Properties;
- (b) any development of the Annexed Property is first approved by the City;
- (c) annexation of such Annexed Property meets any other applicable requirements of this Declaration; and
- (d) contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation Declaration shall be recorded in the Registry.

No Annexation Declaration shall be valid without the prior written approval of the Raleigh City Attorney or his/her deputy. Evidence of such approval shall be indicated by the signature of the City Attorney or his/her deputy on the recorded original or copy of the Annexation Declaration. Any Annexation Declaration recorded without the required City approval is void *ab initio*. An Annexation Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Annexed Property and as are not inconsistent with the general scheme of this Declaration. Each Annexation Declaration shall state that title to the Common Area that is included within the Annexed Property shall be conveyed to the Association no later than the time of the conveyance of the first Lot within the Annexed Property, and any Open Space in the Annexed Property shall be conveyed in fee simple without any encumbrances except drainage, greenway, utility and conservation easements and this Declaration. Open Space in the Annexed Property is subject to all Code and Declaration provisions relating to Open Space. Each Annexation Declaration shall state the amount of the Stormwater Assessment for Lots in the annexed Property when required by Part B, Section 6 of this Article.

Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Declaration in the Registry or such later date as specified in the Annexation

Declaration, and the Annexed Property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Annexation Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration and other Governing Documents of the Association. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance with the terms of this Declaration, the Annexation Declaration, other Governing Documents, the Code, and the Stormwater Agreement, as applicable. The Association shall have the duties, responsibilities and powers set forth in this Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this Declaration or any Annexation Declaration, the Properties, including the Annexed Property, shall be managed and governed by the Association as an entirety. Assessments for Common Expenses collected from Owners in the Annexed Property may be expended by the Association for Common Expenses anywhere in the Properties without regard to the particular phase, area or subdivision from which such assessments came.

Section 14. Access Easement for Repair of Structures. A perpetual access easement over an adjoining Lot hereby is established in favor of each Owner or tenant of a residence or business, and the contractors of such Owner or tenant, whose residence or business is located closer than five (5) feet from an adjoining Lot line, for the purpose of allowing the residence or business to be Maintained. No fence, wall, storage shed, or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the residence or business.

Section 15. Access for Governmental Agencies. A non-exclusive, perpetual right of access over all Lots and Common Areas (including private streets, if any) in the Properties is hereby established for the benefit of Governmental Entities for installing, removing and reading water meters, Maintaining and replacing water and sewer facilities, fire lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and the delivery of mail.

Section 16. Conveyance or Dedication of Common Areas. Common Areas, including Open Space, shall either be conveyed to the Association in fee simple without any encumbrances except this Declaration, drainage, greenway, utility and conservation easements of record at the time of conveyance, and the lien of real property taxes not yet due and payable, or conveyed to the City as allowed or required under the Code. Common Areas may be conveyed to the City free of part or all of the provisions of this Declaration, as determined by the Declarant and the City. Title to Common Areas shall be conveyed to the Association or to the City no later than the time of the conveyance of the first Lot within the applicable phase of the Properties. The Association shall accept all Common Areas, including the improvements installed thereon by the Declarant, deeded to it and/or dedicated to it on any recorded plat of the Properties, whether or not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Properties.

Section 17. Private Utility Lines. Any water or sewer line that serves more than one Lot and which is either located outside of any public street right-of-way or outside of any City utility easement shall be owned and Maintained by the Association as Common Area. In no case shall the City or the State of North Carolina be responsible for Maintaining any such private

utility line or be responsible for the consequences for any blockage, backflow, break or leak in said utility line. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lots within the Properties. Accordingly, the City shall not be responsible for failing to provide regular or emergency utility services to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or their occupants when such failure is due to inadequate design or construction, blockage, backflow, leakage, inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the Owners or occupants of the Properties.

The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration. Provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

Section 18. Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one-hundred and eighty days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

PART B
STORMWATER
(CODE SECTIONS 10-5007 and 10-9027)

Section 1. Stormwater Control Measures. The Code requires that stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the Code, Stormwater Control Measures will be installed by the Declarant and Maintained by the Association as Common Area or Limited Common Area (or by a Sub-Association as Sub-Association Common Area or Sub-Association Limited Common Area) in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement for the Properties so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code and applicable regulations, rules and directives of the City. The expenses for Maintenance of Stormwater Control Measures by the Association shall be Common Expenses (or, if applicable, Limited Common Expenses). Failure to Maintain the Stormwater Control Measures is a violation of the Code potentially subjecting each Owner of a Lot to significant daily civil penalties and other enforcement actions.

Section 2. Creation of Stormwater Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who may be designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2009, the Stormwater Assessment is \$603.00 per Lot. Stormwater Assessments shall commence with respect to each Lot on the later of the date on which this Declaration or applicable Annexation Declaration is recorded or the date on which a plat is recorded establishing the Lot. The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and Maintenance budget for the Stormwater Control Measures as set forth in the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, and any replacement contribution payment owed to the City pursuant to the Stormwater Agreement. The Association shall honor its obligations under the Stormwater Agreement, and the Association shall assess the Stormwater Assessment. The Declarant and each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association. No vote of the Owners is required to levy, collect, or foreclose a Stormwater Assessment. Stormwater Assessments shall be paid to the Association at the same time annual assessments are due.

In the event of nonpayment of any Stormwater Assessment for a period of thirty (30) days or longer after the payment due date, such Stormwater Assessment, together with interest at a rate not to exceed the highest rate allowed by North Carolina law), as computed from the date the delinquency first occurs, late charges, and costs of collection thereof, including reasonable

attorney's fees, shall be a charge on the land upon the filing of a claim of lien, in the manner provided in G.S.47F-3-116(g), in the office of Clerk of Superior Court in the County in which the Lot is located and shall be a continuing lien upon each Lot against which the assessment is made until paid in full. The lien may be foreclosed in accordance with North Carolina law, or in any other manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Stormwater Assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. In such instances, such unpaid assessments shall be deemed Common Expenses collectible from all Owners, including the new Owner.

Each Stormwater Assessment, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was the Owner of the Lot at the time when the Stormwater Assessment first became due and payable. If more than one Person held an ownership interest in the Lot at the time the Stormwater Assessment first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of Stormwater Assessments shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amount due is paid.

The creation of the Stormwater Assessments is for the benefit of the City, and the Stormwater Assessments may be collected and enforced by the City as provided herein and in the Code.

Section 3. Purpose of Stormwater Assessments. The Stormwater Assessments to be levied by the Association against each Lot shall be used as follows:

(a) to pay the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve funds, under any Stormwater Agreement, including Maintenance of the Stormwater Control Measures in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code, applicable regulations and rules and directives of the City;

(b) to pay all legal, engineering and other professional fees incurred by the Association in carrying out its duties as set forth herein, or in the Governing Documents, or in the Stormwater Agreement in connection with the Stormwater Control Measures; and

(c) payments to the City pursuant to the Stormwater Agreement.

Section 4. Assignment of Collection Rights and Lien Rights the City. Pursuant to the Stormwater Agreement and G.S.47F-3-102(15) of the Act, the Association has assigned to the City its rights to collect Stormwater Assessments, its rights to file liens against the Lots, and the right to foreclose on those liens for monies owed by the Association to the City pursuant to the

Stormwater Agreement. The Association shall have a license to collect Stormwater Assessments, to file liens against the Lots, and to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement until such time as the City notifies the Association in writing that it has elected to exercise its right to collect Stormwater Assessments, to file liens against the Lots, and/or to foreclose on those liens for monies owned by the Association to the City pursuant to the Stormwater Agreement. Declarant hereby irrevocably authorizes and directs each Owner to rely upon any written notice sent to such Owner by the Association that the City has elected to exercise its rights hereunder and thereafter to pay Stormwater Assessments directly to the City without any obligation or right to inquire otherwise until such time such Owner receives written notice from the City to pay the Stormwater Assessments directly to the Association. As the assignee of the Association's collection and lien rights, upon the filing of a claim of lien by the City, any such lien may be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Articles 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the office of the clerk of superior court of the county in which the Lot is located; which claim of lien shall state the description of the Lot(s) encumbered by the claim of lien, the name and address of the Association and of the City, the record Owner(s) of the encumbered Lot(s) at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be filed any time after a period of thirty (30) days or longer of default and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is filed, plus late charges, interest at the rate set forth in the Stormwater Agreement, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorney's fees. Any lien claim filed by the City shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

Section 5. Effect of Assignment. Each Owner of a Lot, by acceptance of a deed or otherwise, vests in the City, as the assignee of the Association's collection and lien rights for the Stormwater Assessments, the right and power, upon nonpayment of the Stormwater Assessments by the Association, to bring all actions against each Owner, personally, for the collection of such charges as a debt or to foreclose the lien, which charges and lien amounts shall equal a pro-rata share of the Stormwater Assessments for each Owner. The lien provided for in this Article shall be in favor of the City and shall be for the benefit of all Owners...

Section 6. Annexation of Additional Property. As set forth in this Declaration, additional real property from time to time may be annexed to the Properties and subjected to this Declaration. Such Annexed Property shall also be subjected to existing Stormwater Agreements and/or new Stormwater Agreements, in accordance with the following:

In connection with the recording of an Annexation Declaration, either a new Stormwater Agreement and/or an amendment to an existing Stormwater Agreement (as determined by the City) shall be entered into among the City, Declarant, and Association to address the Stormwater Control Measures of the Annexed Property. The Annexation Declaration shall establish a new Stormwater Assessment for the Lots in the then existing Property and the Annexed Property with respect to all Stormwater Control Measures, including, without limitation, the new Stormwater Control Measures located in or serving such Annexed Property, and such new Stormwater Control Measures shall be designated as Common Area on the recorded plat(s) of the Annexed

Property. The new Stormwater Assessment shall be sufficient to Maintain the existing Stormwater Control Measures serving the existing Property as well as the new or additional Stormwater Control Measures serving the Annexed Property and to pay the applicable replacement contribution payments to the City under the existing Stormwater Agreement, as amended as well as the new Stormwater Agreement, and such Stormwater Assessment(s) shall be assessed against the Owners of the Lots of the then existing Property and the Annexed Property and Owners of the existing or future Lots. It is the intent that the Stormwater Control Measures be deemed Common Areas for the benefit of all Owners and the Stormwater Assessments be adjusted when Annexed Property is subjected to the Declaration based on the total cost of the Stormwater Control Measures serving all lots in the Property, including the Annexed Property divided by the total number of Lots subject to the Declaration.

Section 7. Drainage Easement. The Declarant dedicates, establishes and declares to and for the benefit of each Lot, the Common Area and each Owner hereof:

- (a) a perpetual, irrevocable and nonexclusive easement, right and privilege to discharge and store surface water drainage from such Lot or Common Area into the Stormwater Control Measures situated in private drainage easements that serve the Properties, whether located on or off of the Properties, and
- (b) a perpetual, irrevocable and non-exclusive easement, right and privilege to use and Maintain Stormwater Control Measures, including the right of access to and from the private drainage easements and other portions of the Properties as reasonably necessary to Maintain the Stormwater Control Measures.

Section 8. Joint and Several Liability. Each Owner of any portion of the Properties served by Stormwater Control Measures is jointly and severally responsible for Maintenance of such Stormwater Control Measures, including payment of any unpaid *ad valorem* taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Control Measures, and including all interest charges thereon, together with the costs and expenses of collection incurred by the City or other collecting Person, including court costs and reasonable attorney's fees actually incurred. Each Owner of any portion of the Properties served by the Stormwater Control Measures has a right of contribution against all other Owners of other portions of the Properties served by the same Stormwater Control Measures for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's prorata share thereof, such prorata share being determined either by other assessment provisions of this Declaration or by dividing the acreage of such Owner's portion of the Properties served by the Stormwater Control Measures by the total acreage of the Properties served by the same Stormwater Control Measures.

Section 9. Relocation of Drainage Easements. Drainage easements situated on the Properties may be relocated only by a written agreement signed by the Association - upon approval of the Board of Directors without vote of the Members - and by the Owners of all portions of the Properties on which the drainage easement then is located, and by the Owners of all portions of the Properties on which the drainage easement is to be relocated. The consent of tenants and Mortgagees of the affected Lots shall not be required for the relocation to be effective. All relocations of a drainage easement shall be accompanied with a letter sealed by a

professional engineer licensed in the State of North Carolina stating that the relocated drainage easement will not cause any adverse stormwater runoff unto adjoining properties.

Notwithstanding anything herein to the contrary, no relocation of any drainage easement shall be valid without the without the prior approval of the Raleigh Chief Engineer or his/her Deputy. City approval shall be evidenced by the signature of the Raleigh Chief Engineer or his/her Deputy on the recorded plat or other instrument of the relocation. Any relocation, without the required City signature is void ab initio.

Relocation of a drainage easement is valid from the later of the time of either recording of the plat or other instrument of relocation in the Registry or such later date specified therein.

PART C
CLUSTER UNIT DEVELOPMENT
(CODE SECTIONS 10-2101, 10-3071 and 10-3073)

Any portion of the Properties that is part of a "cluster unit development", as that term is defined in the Code, is subject to all of the following:

Section 1. Open Space. In addition to other provisions of this Article (*see e.g., Part A, Sections 6, 16 and 17*), all Open Space is subject to the following:

(a) Preservation. Open Space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Properties, and shall be restricted against private or public ownership for any other purpose except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(b) Exchange. Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Open Space for other properties when all of the following are met:

- (1) written notice of the exchange is given to each Member of the Association;
- (2) after the notice is given, those Members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;
- (3) the exchanged properties and other considerations are of like value and utility;
- (4) the acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and
- (5) the exchange is approved by the Planning Director of the City.

(c) Dissolution. If the Association is dissolved, the Open Space shall first be offered to the City, and, if accepted, deeded to the City.

(d) Recreation. Recreational uses located in Open Space and other Common Areas shall comply with the provisions of Code Section 10-2072 related to recreational use related to a residential development, other than a single-family dwelling unit. Membership fees shall not be charged to non-members of the Association for any recreation facility located in a residential zoning district unless the facility is owned by a non-profit entity and a special use permit is first obtained from the Raleigh Board of Adjustment in accordance with Code Section 10-2144(b), "Recreational Use Restricted to Membership - Not for Profit".

(e) Mortgaging of Open Space. Open Space may be subjected to a security interest with the written approval by those Members who have the minimum percentage of votes in the Association required by the Act or any greater percentage required by this

Declaration, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Association.

Section 2. Residential Density Transfers. The Properties are developed as a cluster unit development approved by the City. Residential density transfers are permitted in a cluster unit development as allowed in the Code. Accordingly, even though some Lots may appear to contain enough land area to construct additional dwelling units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude City approval of additional dwellings or further subdividing of Lots.

Section 3. Development Rights. Development rights retained by the Declarant as special Declarant rights, including the right to add real estate to the cluster unit development, to add dwelling units, to add Common Areas, to change dwelling unit types within the cluster, or to reallocate units within the cluster, as well as all conditions and limitations applied to the exercise of any such development rights, are described in other Articles and Sections of this Declaration. Exercise of any of the development rights described in this Section is subject to the prior approval of the City.

Section 4. Addition of Land. The maximum amount of land that can be added to the cluster unit development is as follows: 73.15 acres.

Section 5. Number of Dwelling Units. The maximum number of dwelling units and the maximum number of dwelling units per acre that can be contained in the cluster unit development, or transferred to portions of the cluster unit development without rezoning the real property to another zoning classification for additional dwelling units, are as follows (for purposes of this Section, the cluster unit development includes all portions of the Properties initially subjected to this Declaration that are part of the cluster unit development, together with all Annexed Property that becomes subject to this Declaration and is part of the cluster unit development):

- (a) maximum number of dwelling units allowed in the cluster unit development is three hundred (300) Lots.
- (b) maximum number of dwelling units per acre allowed in the cluster unit development is 6.

Section 6. Common Party Walls. All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

- (a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion

to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

(f) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

(g) Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences or businesses to the extent reasonably necessary to repair, restore, Maintain or reconstruct the common party wall. Such repair, restoration, Maintenance or reconstruction shall be done expeditiously and,

promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences or businesses damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

PART D
TOWNHOUSE DEVELOPMENT
(CODE SECTIONS 10-2109, 10-3072 AND 10-3073)

Any portion of the Properties that is part of a "townhouse development", as that term is defined in the Code, is subject to all of the following. A townhouse development may be, but is not required to be, part of a cluster unit development. Any townhouse development that is part of a cluster unit development is also subject to the provisions of the Code applicable to cluster unit developments (some of which may be identical to the following provisions), except as otherwise provided in the Code:

Section 1. Open Space. In addition to other provisions of this Article (*see e.g.*, Part A, Sections 6, 16 and 17), all Open Space is subject to the following:

(a) Townhouse Open Space. Townhouse Open Space and private streets used for the exclusive benefit of townhouse residents are Limited Common Area or Sub-Association Common Area when the townhouse development is part of a cluster unit development containing other housing types.

(b) Preservation. Open Space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Properties, and shall be restricted against private or public Ownership for any other purpose, except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(c) Exchange. Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Open Space for other properties when all of the following are met:

(1) written notice of the exchange is given to each Member of the Association;

(2) after the notice is given, those members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;

(3) the exchanged properties and other considerations are of like value and utility;

(4) the acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and

(5) the exchange is approved by the Planning Director of the City.

(d) Dissolution. If the Association is dissolved, the Open Space shall first be offered to the City, and if accepted, deeded to the City.

(e) Recreation. Recreational uses located in Open Space and other Common Areas shall comply with the provisions of Code Section 10-2072 related to recreational use related to a residential development, other than a single-family dwelling unit. Membership fees shall not be charged to non-members of the Association for any recreation facility located in a residential zoning district unless the facility is owned by a non-profit entity and a special use permit is first obtained from the Raleigh Board of Adjustment in accordance with Code Section 10-2144(b), "Recreational Use Restricted to Membership - Not for Profit".

(f) Mortgaging of Open Space. Open Space may be subjected to a security interest with the written approval by those Members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Association.

Section 2. Common Party Walls. All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

(a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

(f) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

(g) Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences or businesses to the extent reasonably necessary to repair, restore, Maintain or reconstruct the common party wall. Such repair, restoration, Maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences or businesses damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

PART E
PLANNED DEVELOPMENT CONDITIONAL USE OVERLAY DISTRICT
(CODE SECTION 10-2057)

NOT APPLICABLE. INTENTIONALLY OMITTED

PART F
CITY GREENWAYS
(CODE SECTIONS 10-3003 AND 10-3022)

Notwithstanding any other provision of this Declaration, without the prior written consent of the City, none of the following is allowed in any City-owned greenway or greenway easement: grading; excavation; dredging; the addition or removal of soil or other materials; the erection of buildings, signs, fences, drainage devices or structures; or any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code). The City, in its sole discretion, at any time and from time to time, may erect paved or unpaved trails, trail markers, and place litter receptacles and other convenience facilities, within the greenway boundaries. The City, in its sole discretion, may adopt and amend regulations concerning the use of greenway (including, by way of example, limiting hours of operation), which shall be equally applicable to the general public and to the Owners and their occupants and guests.

PART G
PRIVATE STREETS
(CODE SECTION 10-3074)

Section 1. Private Streets. Pursuant to Code Section 10-3074 (b) and (c), all of the following are applicable to private streets in the Properties:

(a) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or to the occupants of same when such failure is due to lack of access to such areas due to inadequate design, construction or blocking of access routes, inadequate Maintenance, or any other factor within the control of the Declarant, the Association, the Owners or the occupants of the Properties.

(b) In no case shall the City or the State of North Carolina be responsible for Maintaining any private street. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lot within the Properties, in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

(c) The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration; provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

TOLL NC, L.P., a North Carolina limited partnership

By: TOLL NC GP CORP., its general partner

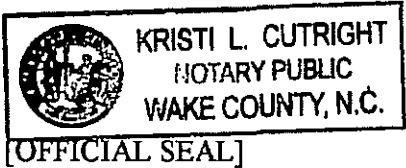
By: [Signature]
Name: Bobby Schooley
Title: Vice President

Wake County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Bobby Schooley
Name of Principal

Date: July 18, 2008

[Signature]
Official Signature of Notary Public



Kristi L. Cutright, Notary Public
Notary printed or typed name

My commission expires: May 16, 2009

EXHIBIT A

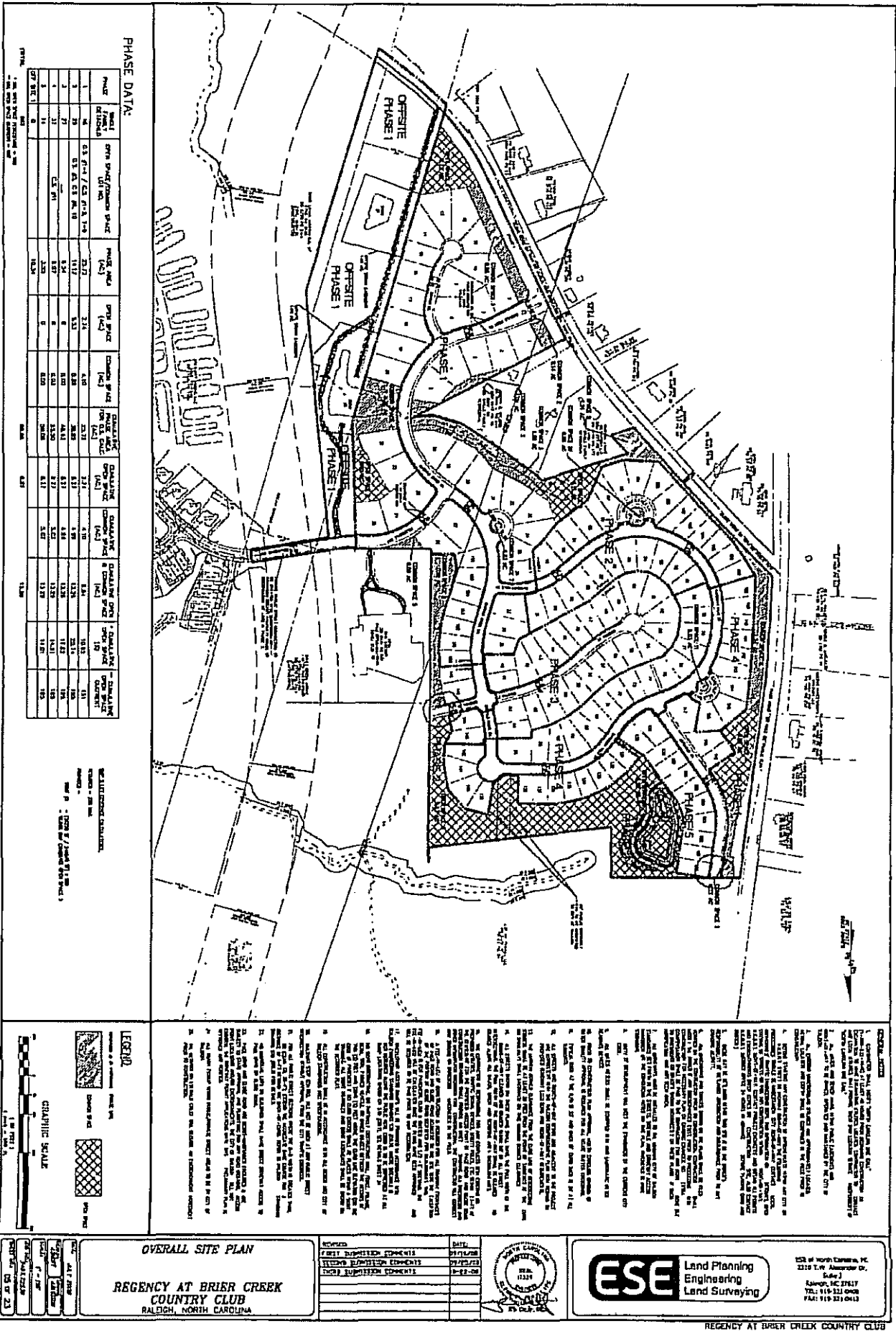
The Property

That certain real property located in Durham County and Wake County, North Carolina, consisting of Lots 1 through 39, inclusive, Lots 150 through 156, inclusive, those parcels identified as Open Space 301, Open Space 302, Open Space 303, Open Space 304, Open Space 305 and Open Space 306, and those easement areas identified as "Private Drainage Easement", inclusive of the easement areas identified as Private Drainage Easement on Lot 501 (Off Site Toll NC LP Parcel), all as more particularly shown on that certain map prepared by ESE of North Carolina, PC and recorded in Plat Book 183 Pages 27-49, Durham County Registry and recorded in Book of Maps 2008, Pages 2037-2048, Wake County Registry.

BK013294PG01128

EXHIBIT B

The Site Plan





BOOK:013294 PAGE:01043 - 01130

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



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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ 88 # of Pages