

Brier Creek



Brier Creek Country Club Owners Association, Inc.

September 19, 2005

To: Brier Creek Country Club Homeowners

Re: Amendment to the CCR's

Dear Brier Creek Homeowner:

Enclosed please find an amendment approved at a meeting of the Board of Directors for the Brier Creek Country Club Owners Association on August 31, 2005. This document should be added to your original homeowner's manual for reference in the Covenants, Conditions and Restrictions section.

The document makes changes to the overall Declaration of Covenants, Conditions and Restrictions which applies to all homes in the community.

The Article covering "Utility Yards" Article VIII, Section 19 has been replaced to clarify the placement of trash on any lot. This change was required due to unclear language in the original document which resulted in trash and trashcans being stored in unsightly areas on lots around the community.

If you have any questions relating to these or any other HOA issues, please do not hesitate to contact me directly at (919) 321-4240.

On behalf of the Board of Directors,

Chris Parrish
Community Manager
Brier Creek Country Club- HOA

WAKE COUNTY, NC 960
LAURA M RIBBICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
08/29/2005 AT 16:39:44

BOOK:011553 PAGE:00741 - 00745

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**FIFTH AMENDMENT TO
AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BRIER CREEK COUNTRY CLUB COMMUNITY**

THIS FIFTH AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIER CREEK COUNTRY CLUB COMMUNITY (the "Amendment") is made and entered into as of this 24TH day of AUGUST, 2005, by TOLL AT BRIER CREEK LIMITED PARTNERSHIP, a North Carolina limited partnership (the "Declarant").

WHEREAS, Declarant is the Declarant under that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated May 30, 2000, and recorded in Book 8596, Page 935 in the Office of the Wake County Register of Deeds (the "Original Declaration"), as previously supplemented and amended (the Original Declaration, as so supplemented and amended, is hereinafter referred to as the "Declaration"); and

WHEREAS, the Declarant desires to amend certain provisions of the Declaration, as set forth below, and has the authority to so amend the Declaration pursuant to Paragraph 3 of the Third Amendment to Amended and Restated Declaration of Covenants, and Restrictions for Briar Creek Country Club Community recorded in Book 10910 at page 1412 of the Wake County Registry.

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

Prepared by & Return to:
Brian Evans, Esq.
Kennedy Covington Lobdell & Hickman, L.L.P.
VAULT BOX # 123

2351112.01
LIB: CHARLOTTE

1. Defined Terms. All capitalized terms used herein, unless otherwise defined herein, shall have the meanings set forth in the Declaration.

2. Utility Yards. Section 19 of Article VIII of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 19. Trash. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in the garage (except for the periods immediately preceding and subsequent to pick up by the applicable disposal service).

3. 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.

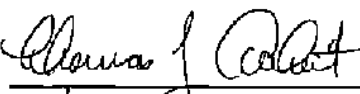
4. Consent of Association. Pursuant to Article XIII, Section 2 of the Original Declaration, the Association has executed this Amendment solely for indexing purposes.

[Signatures on following pages]

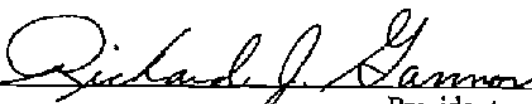
IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed as of the day and year first above written, and the Association has executed this Amendment for indexing purposes as set forth herein.

TOLL AT BRIER CREEK LIMITED
PARTNERSHIP

By: Toll NCGP Corp., its General Partner

By: 
VICE President

BRIER CREEK COUNTRY CLUB OWNERS
ASSOCIATION, INC.

By: 
President

NORTH CAROLINA, WAKE COUNTY

I, JANET L. RAUSCHENBACH a Notary Public of the County and State aforesaid, certify that THOMAS L. ANHUT personally came before me this day and acknowledged that s/he is VICE PRESIDENT of Toll NCGP Corp., a North Carolina corporation, the General Partner of Toll at Brier Creek Limited Partnership, a North Carolina limited partnership, and that by authority duly given and as the act of the corporation, acting as the General Partner of said partnership, he/she, as VICE PRESIDENT, executed the foregoing instrument on behalf of the corporation..

Witness my hand and official seal, this 24 day of AUGUST, 2005.



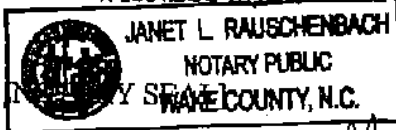
Janet L. Rauschenbach
Notary Public
My Commission Expires: May 16, 2009

NORTH CAROLINA

WAKE COUNTY

I, JANET L. RAUSCHENBACH, a Notary Public of the County and State aforesaid, certify that RICHARD J. GANNON personally appeared before me this day and acknowledged that he/she is _____ President of Brier Creek Country Club Owners Association, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was executed on behalf of said corporation.

WITNESS my hand and official stamp or seal, this 24 day of AUGUST, 2005.



Janet L. Rauschenbach
Notary Public

My Commission Expires: May 16, 2009

The foregoing certificate of _____ is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

_____, Register of Deeds for Wake County, North Carolina

By: _____
Deputy/Assistant Register of Deeds

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**THIRD AMENDMENT TO
AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BRIER CREEK COUNTRY CLUB COMMUNITY**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIER CREEK COUNTRY CLUB COMMUNITY (the "Amendment") is made and entered into as of this 5TH day of MAY, 2004, by TOLL AT BRIER CREEK LIMITED PARTNERSHIP, a North Carolina limited partnership (the "Declarant").

WHEREAS, Declarant is the Declarant under that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community dated May 30, 2000, and recorded in Book 8596, Page 935 in the Office of the Wake County Register of Deeds (the "Original Declaration"), as previously supplemented and amended (the Original Declaration, as so supplemented and amended, is hereinafter referred to as the "Declaration"); and

WHEREAS, Article XIII, Section 2, of the Original Declaration provides that the Declaration may be amended or modified at any time by an instrument signed by the Owners of not less than seventy-five percent (75.0%) of the total votes in the Association; and

WHEREAS, Declarant currently holds more than seventy-five percent (75%) of the total votes in the Association; and

WHEREAS, the Declarant desires 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.

2. Working Capital Fund. Article V, Section 13, of the Original Declaration is hereby deleted and the following inserted in lieu thereof:

Section 13. Working Capital Fund. At the time of closing of the initial sale of each Lot by Declarant to a third party purchaser, such sum as is determined by Declarant from

time to time shall be collected from the purchaser of such Lot and transferred to the Association to be held as a working capital fund. The sum to be collected may be established by Declarant in its sole and absolute discretion, and may be computed as a percentage of the annual assessment or as a set amount, and may be set at different amounts for different types of Lots (for example, one amount for Lots upon which detached single family Dwelling Units are to be constructed, and another for Lots upon which townhomes are to be constructed). In addition, at the time of such closing Declarant may elect, but shall not be obligated, to pay to the Association an amount determined by Declarant in its sole and absolute discretion to be held in such working capital fund. The purpose of said fund is to make cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

2. Landscaping. Article VIII, Section 14 is hereby deleted in its entirety and is replaced by the following:

Section 14. Landscaping.

Except for the single-family residence, driveways, sidewalks and other Improvements on each Lot or Dwelling Unit, the surface of each Lot shall be of undisturbed areas left in their natural state or grass or other live foliage or areas covered with pine straw and/or other ground cover approved by the Architectural Control Committee, and such natural areas, grass foliage, pine straw and ground cover shall be neatly maintained at all times. No trees may be removed from any Lot without the written approval of the Architectural Control Committee.

3. Amendment. The first paragraph of Article XIII, Section 2 is hereby deleted in its entirety and is replaced by the following:

Subject to the limitations hereinafter contained, this Declaration or any Supplemental Declaration hereto may be amended or modified at any time prior to December 31, 2030 by an instrument signed by the Owners entitled to exercise not less than seventy five (75%) of the total votes in the Association as set forth in this Declaration, provided, however, that no such amendment shall be effective without the written consent of Declarant so long as Declarant owns any Lot or Dwelling Unit. With respect to any amendments affecting specific Limited Common Property, the foregoing percentages are required only of those Owners of Lots or Dwelling Units that are located in the phase or section of the Development to which such Limited Common Area relates. Furthermore, Declarant, as long as Declarant owns any portion of the Property, may amend this Declaration in any manner deemed necessary or desirable by Declarant, provided that no such amendment by Declarant shall impose any additional material obligations or burdens upon any Lot or otherwise materially and adversely affect any Lot or other portion of the Property. No other party shall be required to join in any such amendment

by Declarant for it to be effective; however, pursuant to Article XIII, Section 2 of the this Declaration, the Association shall execute any such amendment solely for indexing purposes.

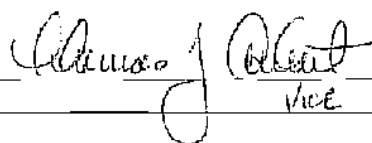
3. Effect of Amendment. The Declaration is hereby modified to the extent set forth herein, but only to the extent set forth herein. All provisions of the Declaration not modified by this Amendment remain in full force and effect as hereby modified.

4. Consent of Association. Pursuant to Article XIII, Section 2 of the Original Declaration, the Association has executed this Amendment solely for indexing purposes.

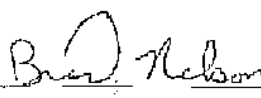
IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed as of the day and year first above written, and the Association has executed this Amendment for indexing purposes as set forth herein.

TOLL AT BRIER CREEK LIMITED
PARTNERSHIP

By: Toll NCGP Corp., its General Partner

By: 
Vice President

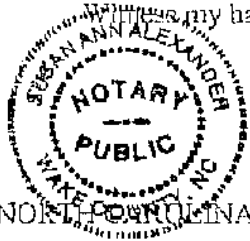
BRIER CREEK COUNTRY CLUB OWNERS
ASSOCIATION, INC.

By: 
President

NORTH CAROLINA, WAKE COUNTY

I, Susan A. Alexander, a Notary Public of the County and State aforesaid, certify that THOMAS A. ANNET personally came before me this day and acknowledged that s/he is VICE PRESIDENT of Toll NCGP Corp., a North Carolina corporation, the General Partner of Toll at Brier Creek Limited Partnership, a North Carolina limited partnership, and that by authority duly given and as the act of the corporation, acting as the General Partner of said partnership, he/she, as VICE PRESIDENT, executed the foregoing instrument on behalf of the corporation..

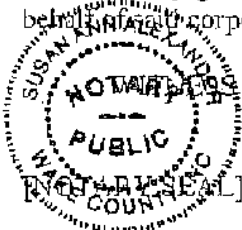
Witness my hand and official seal, this 5 day of May, 2004.



Susan Ann Alexander
Notary Public
My Commission Expires: 8-4-2006

WAKE COUNTY

I, Susan A. Alexander, a Notary Public of the County and State aforesaid, certify that BRAD NELSON personally appeared before me this day and acknowledged that he/she is - President of Brier Creek Country Club Owners Association, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was executed on behalf of said corporation.



Witness my hand and official stamp or seal, this 5 day of May, 2004.

Susan Ann Alexander
Notary Public

My Commission Expires: 8-4-2006

The foregoing certificate of _____ is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

_____, Register of Deeds for Wake County, North Carolina

By: _____
Deputy/Assistant Register of Deeds



Phone: 919 878 8787
Fax: 919 376 8800

Talis Management Group

8305 Falls of Neuse Road • Suite 200 • Raleigh, NC 27615 • P.O. Box 99149 • Raleigh, NC 27624

May 20, 2004

Brier Creek Country Club Homeowners

Re: Amendment to the Assessment Loan Agreement/CCR's

Dear Brier Creek Homeowner:

Enclosed you will find 3 documents approved at a special meeting of the Board of Directors for the Brier Creek Country Club Owners Association on May 5, 2004. All of these documents should be added to your original homeowner's manual for reference.

The first document makes three changes to the overall Declaration of Covenants, Conditions and Restrictions which applies to all homes in the community.

1. The Article covering landscaping has been clarified to require written approval by the Architectural Control Committee prior to any trees being removed from any lot. This change was required due to unclear language in the original document which resulted in a significant number of trees being removed from a couple of lots in the community.

2. The Article covering amendments to the documents has been revised to clarify the voting and approval rights of the Declarant.

3. The Article outlining the working capital fund, which is collected at the settlement of each home, has been modified to allow more flexibility in the amounts contributed.

The second document references the Loan Agreement between the Declarant and the HOA. This no-interest loan from the Declarant to the HOA helps fund the Association until there are enough members in the HOA for it to be self-sufficient (the "break-even" number). At that point the HOA will begin paying back the loan, without interest, to the Declarant. With this amendment the Declarant is notifying the Board of its intent to exercise its right to discontinue paying into the working capital fund and also clarifies that all monies previously paid into the fund by the Declarant are considered part of the loan.

The third document is a new architectural guideline addressing Holiday and Special Decorations in your yard. The new guideline has been approved by the Board of Directors and should be placed in your handbook under Architectural Guidelines Section 3.16.

If you have any questions relating to these or any other HOA issues, please do not hesitate to contact me directly at (919) 321-4240.

On behalf of the Board of Directors,

Chris Parrish
Community Manager
Brier Creek Country Club HOA

AMENDMENT TO
ASSESSMENT LOAN AGREEMENT

THIS AMENDMENT TO ASSESSMENT LOAN AGREEMENT (this "Amendment") is made as of the 5 day of ^{May} April, 2004 by and between TOLL AT BRIER CREEK LIMITED PARTNERSHIP ("Toll") and BRIER CREEK COUNTRY CLUB OWNERS ASSOCIATION, INC. ("Association").

Statement of Purpose

Toll is the "Declarant" under that Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community as recorded in Book 8596, Page 935 of the Wake County Public Registry, as amended and supplemented from time to time (the "Declaration"). In connection with Toll's development of Brier Creek Country Club Community, Toll and the Association entered into that Assessment Loan Agreement dated June 17, 2002 ("Agreement"). Terms spelled with initial capital letters in this Amendment shall have the meanings given to them in the Declaration, unless otherwise defined herein. The parties hereto wish to amend the Agreement as more particularly set forth herein.

NOW, THEREFORE, Toll and the Association do hereby amend the Agreement as follows:

1) Working Capital Contribution. The parties hereto acknowledge that Article V, Section 13 of the Declaration provides that Toll may, but is not obligated to, contribute Five Hundred and No/100 Dollars (\$500.00) to the Association's working capital fund at the closing of each Lot. Toll has been contributing such amount at the closing of each Lot, but hereby elects, in accordance with the terms of the Declaration, to discontinue such contributions toward the Association's working capital fund. The parties hereto acknowledge that all amounts that have been contributed by Toll to the Association's working capital fund are Assessment Loan proceeds that have been loaned by Toll to the Association in accordance with the Agreement, and the Association has the obligation to repay such amounts to Toll in accordance with the Agreement.

2) Break-even Number. The parties wish to clarify the definition of "Break-even Number of Lots", as defined in the Agreement. The Break-even Number of Lots shall be attained when a certain number of Lots are owned by parties other than Toll, such that the assessments collected from those Lots are enough to pay for all Common Expenses incurred by the Association, including without limitation reserves.

IN WITNESS WHEREOF, Association and Toll have executed and delivered this Agreement as of the day and year first above written.

BRIER CREEK COUNTRY CLUB OWNERS
ASSOCIATION, INC.

By: Brian Nelson

TOLL AT BRIER CREEK LIMITED
PARTNERSHIP,
a North Carolina limited partnership

By: Toll NE GP Corp., its General Partner

By: William J. Albert
Vice President

August 15, 2003

Brier Creek Country Club Homeowners

Re: Amendments to the Homeowners Association Covenants and Restrictions.

Dear Brier Creek Homeowner:

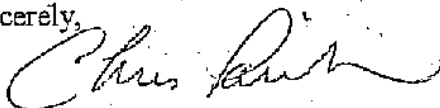
In 2001 the City of Raleigh implemented new state-mandated stormwater control measures. For the most part, Brier Creek Country Club was grandfathered from these provisions. At the time that these control measures were implemented, the two acres consisting of the Guess property in what is now the Village of Brookline, were not part of Brier Creek Country Club. When Toll Brothers purchased the Guess property and annexed it into the community, the new stormwater provisions applied to this two-acre tract. Therefore, in order to develop the property it was necessary to comply with the new stormwater regulations. To do so, the existing pond, which wraps around the southern end of the Village of Brookline, will act as a stormwater detention facility for the homesites which constitute the old Guess property.

To accomplish this, the land under the current pond and additional open space and woods to the south, have been transferred from Brier Creek Country Club to the Homeowners Association. The HOA was required to enter into a maintenance and escrow agreement with the city to provide for the maintenance of the pond and to fund an escrow in case repairs or replacement are ever needed. In the attached Exhibit D to that document, you will see that Toll Brothers constructed the pond and has funded the first \$29,089 of this required escrow; the HOA will fund the balance in years 2 through 10 in accordance with City requirements.

Also, enclosed you will find an Emergency Access Easement Agreement between Toll Brothers and the HOA and the City of Raleigh. As the land transferred from Toll Brothers to the HOA contains an emergency access way, in this agreement the HOA granted access to this emergency way to the city. The enclosed Second Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions incorporates all these changes into the HOA documents.

If you have any questions, please do not hesitate to call.

Sincerely,



Chris Parrish
Community Manager
Brier Creek Country Club HOA



THE JOHN R. McADAMS COMPANY, INC.

MEMORANDUM

Exhibit D

TO: Brier Creek Homeowner's Association
FROM: Jonathan Moore, P.E.
DATE: October 31, 2002
RE: Brier Creek Country Club - Phase 18
Replacement Cost and Escrow Funding

Enclosed is the engineering estimate for replacement cost for Pond 4 located between holes #7 Green and #11 Tee. This pond and outlet structure is required as part of complying with the Neuse Nitrogen ordinance as a condition of approval for the development of Phase 18.

Original Construction Cost (Supplied by Toll Brothers, Inc.):

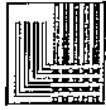
Pond Excavation and Testing	\$80,000
Outlet Structure	\$30,000

Total Cost \$110,000

Replacement Costs:

Pond Berm/Testing/Disposal	\$80,000
Outlet Structure	\$30,000

Total Replacement Cost \$110,000



THE JOHN R. McADAMS COMPANY, INC.

Escrow Account for Structural Replacement and Major Repairs, the
Escrow Account should be funded per the following schedule:

Years	Annual Payment
1	\$29,029
2	\$12,529
3	\$12,529
4	\$12,529
5	\$12,529
6	\$6,171
7	\$6,171
8	\$6,171
9	\$6,171
10	\$6,171

BOOK: A10105 PAGE: 01491 - 01497

STATE OF NORTH CAROLINA

EMERGENCY ACCESS EASEMENT
AGREEMENT

COUNTY OF WAKE

THIS EMERGENCY ACCESS EASEMENT AGREEMENT (this "Agreement") is made as of this 6 day of February, 2003 by and between TOLL AT BRIER CREEK LIMITED PARTNERSHIP, a North Carolina limited partnership ("Toll"), BRIER CREEK COUNTRY CLUB OWNERS ASSOCIATION, INC. ("Association," with Toll and Association being hereinafter collectively referred to as "Grantor") and THE CITY OF RALEIGH, a North Carolina municipal corporation ("Grantee").

RECITALS

WHEREAS, Toll and Association collectively own that certain golf course and all of the real property adjoining thereto located in the City of Raleigh, North Carolina ("Grantor's Property"), as more particularly shown on that plat entitled "Brier Creek Country Club, Phase 18 Nitrogen Loading & Tract 21 Subdivision," as recorded in Book of Maps 2003, Pages 704-706 of the Wake County Public Registry (the "Plat"); and

WHEREAS, Grantor wishes to grant to Grantee an emergency access easement (the "Easement") over that real property (the "Easement Area") described on Exhibit A and incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual rights and privileges granted herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby agree as follows:

1. Grant of Easement. Grantor does hereby grant to Grantee, its successors, assigns, personnel and contractors the non-exclusive, perpetual right, privilege and easement over, under, upon, through and across the Easement Area for the purposes of providing emergency services to Grantor's Property, the golf course and the drainage easement shown on the plat, including without limitation fire, police and ambulance services:

2. Scope of Easement. Grantor and the City of Raleigh Fire Department ("Fire Department") shall mutually agree on a mechanism by which to provide access to the Easement Area to Grantee's personnel and contractors, which mechanism shall also prevent the general public from accessing the Easement Area. Should such mechanism include the construction of one or more gates, Grantor and the Fire Department shall agree upon the design, materials and locking mechanisms for the gates, and Grantor shall maintain all gates and locking mechanisms in working order to insure accessibility to the Easement Area by the Grantee, its contractors and personnel. The Grantee, its contractors and personnel shall have the right to break any gate or locking mechanism when the Grantee, its contractors or personnel reasonably believe that doing

2/2003704
LMB:CH

Drawn by and return to:
Taryn G. Meier, Esq.
Kennedy Cavington Lobdell & Nicholson, L.L.P.
214 North Tryon Street, 47th Floor
Charlotte, North Carolina 28202

so is urgently necessary to save life, prevent serious bodily harm, avert or control a public catastrophe or undertake emergency repair of the detention pond shown on the Plat and labeled as "Pond" (collectively "Public Necessity"), and Grantor shall repair such gate and locking mechanism at its sole cost or expense.

3. Amendment. This Agreement and the exhibits attached hereto contain the entire agreement among the parties. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by Grantor, Grantee, their heirs, personal representatives, successors, assigns and grantees.

4. No Partnership, Joint Venture, or Principal Agent Relationship. Nothing in this Agreement nor any acts of the parties shall be deemed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties, and no provisions of this Agreement are intended to create or constitute any person or third party beneficiary hereof.

5. Binding Effect. This Agreement and the terms and provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties.

6. Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

7. Counterparts. This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signature of all parties shall constitute an original of this Agreement.

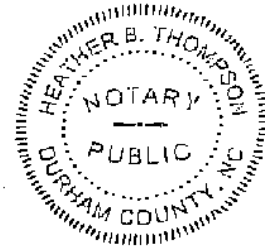
STATE OF NORTH CAROLINA

COUNTY OF Durham

I, Heather B. Thompson, the undersigned, a Notary Public of the County and State aforesaid, certify that Tom Arbut personally came before me this day and acknowledged that he/she is Vice President of Toll NC GP Corp., a North Carolina corporation, sole general partner of Toll at Brier Creek Limited Partnership, a North Carolina limited partnership, and that he/she as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 21 day of February, 2003.

Heather B. Thompson
Notary Public



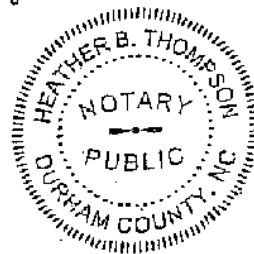
STATE OF North Carolina

COUNTY OF Durham

I, Heather B. Thompson, the undersigned, a Notary Public of the County and State aforesaid, certify that Brad Nelson personally came before me this day and acknowledged that he/she is Asst Vice President of Brier Creek Country Club Owners Association, Inc., a North Carolina corporation, and that he/she as Asst Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 21 day of February, 2003.

Heather B. Thompson
Notary Public



IN WITNESS WHEREOF, each party has caused its duly authorized officers to sign this Agreement as of the date and year first-above written.

TOLL AT BRIER CREEK LIMITED
PARTNERSHIP,
a North Carolina limited partnership [SEAL]

By: TOLL INC GP Corp, its General Partner

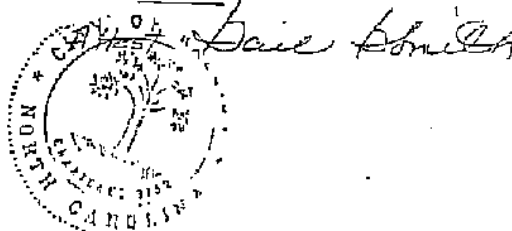
By: [Signature]
Vice President

BRIER CREEK COUNTRY CLUB OWNERS
ASSOCIATION, INC.

By: [Signature]
President

THE CITY OF RALEIGH, a North Carolina
municipal corporation [SEAL]

By: [Signature]
Title: _____



STATE OF North Carolina

COUNTY OF Wake

I, Victoria S. Teachey a Notary Public of the County and State aforesaid, certify that Charles Smith personally came before me this day and acknowledged that s/he is City Clerk of THE CITY OF RALEIGH, a North Carolina municipal corporation, and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its City Manager as the act and deed of said municipal corporation.

In witness my hand and official seal, this 10 day of March, 2003.

[NOTARY SEAL]

Victoria S. Teachey
Notary Public

My commission expires: 10-13-07

Exhibit A

That portion of real property labeled as "Existing 20' City of Raleigh Emergency Access Easement" as shown on that plat recorded in Book of Maps 2003, Pages 704-706, of the Wake County Public Registry.

2130037.04
LIR:CH



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



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

North Carolina - Wake County

The foregoing certificate s of Heather B Thompson
Victoria Stearney

Notary(ies) Public is (are) certified to be correct. This instrument
and this certificate are duly registered at the date and time and in the book and
page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: Janel Morgan
Assistant/Deputy Register of Deeds

This Customer Group
of Time Stamps Needed

This Document
New Time Stamp
of Pages

WAKE COUNTY, NC 505
LAURA H RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
05/06/2003 AT 14:44:57

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BOOK:010105 PAGE:0148B - 01495

SECOND AMENDMENT TO
AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BRIER CREEK COUNTRY CLUB COMMUNITY

THIS SECOND AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIER
CREEK COUNTRY CLUB COMMUNITY (the "Amendment") is made and entered into as
of this 6 day of ^{May}~~February~~, 2003, by TOLL AT BRIER CREEK LIMITED
PARTNERSHIP, a North Carolina limited partnership (the "Declarant").

WHEREAS, Declarant is the Declarant under that certain Amended and Restated
Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community
dated May 30, 2000, and recorded in Book 8596, Page 935 in the Office of the Wake County
Register of Deeds (the "Declaration"), which restricts 179 Lots (as defined in the Declaration), as
supplemented by (i) that First Supplemental Declaration to Amended and Restated Declaration
of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated
September 7, 2000, and recorded in Book 8679, Page 406 in the Office of the Wake County
Register of Deeds, which restricts 26 additional Lots, (ii) that Second Supplemental Declaration
to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek
Country Club Community dated October 26, 2000, and recorded in Book 8717, Page 1266 in the
Office of the Wake County Register of Deeds, which restricts 108 additional Lots, (iii) that Third
Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and
Restrictions for Briar Creek Country Club Community dated October 1, 2001, and recorded in
Book 9110, Page 262 in the Office of the Wake County Register of Deeds, which restricts 35
additional Lots, (iv) that Fourth Supplemental Declaration to Amended and Restated Declaration
of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated
December 4, 2001, and recorded in Book 9218, Page 761 in the Office of the Wake County
Register of Deeds, which restricts 7 additional Lots, (v) that Fifth Supplemental Declaration to
Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek
Country Club Community dated January 28, 2002, and recorded in Book 9268, Page 936 in the
Office of the Wake County Register of Deeds, which restricts 61 additional Lots, (vi) that Sixth
Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and
Restrictions for Briar Creek Country Club Community dated February 5, 2002, and recorded in
Book 9284, Page 747 in the Office of the Wake County Register of Deeds, which restricts 25
additional Lots, (vii) that Seventh Supplemental Declaration to Amended and Restated
Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community
dated July 23, 2002, and recorded in Book 9508, Page 1509 in the Office of the Wake County
Register of Deeds, which restricts 106 additional Lots, (viii) that Eighth Supplemental
Declaration to Amended and Restated Declaration of Covenants, Conditions and Restrictions for
Briar Creek Country Club Community dated September 20, 2002, and recorded in Book 9623,

Page 645 in the Office of the Wake County Register of Deeds, which restricts 69 additional Lots, (ix) and that Ninth Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community dated October 1, 2002 and recorded in Book 9643, Page 550 in the Office of the Wake County Register of Deeds, which restricts 162 additional Lots, and as amended by that First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community dated June 17, 2002, and recorded in Book 9469, Page 899 in the Office of the Wake County Register of Deeds (the Declaration, its nine Supplements and its first amendment shall collectively herein be called the "Amended, Supplemented and Restated Declaration") (all capitalized terms not otherwise defined in this Second Amendment shall have the same meaning as in the Amended, Supplemented and Restated Declaration);

WHEREAS, Article XIII, Section 2, of the Amended, Supplemented and Restated Declaration provides that the Amended, Supplemented and Restated Declaration may be amended or modified at any time by an instrument signed by the Owners of not less than seventy-five percent (75.0%) of the total votes in the Association; and

WHEREAS, as set forth above, there are currently 778 Lots subject to the Amended, Supplemented and Restated Declaration, and Declarant owns 501 of those Lots, as set forth on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to Article III, Section 2 of the Amended, Supplemented and Restated Declaration, Declarant is entitled to three (3) votes for each Lot owned by Declarant, and therefore has 1503 votes in the Association; and

WHEREAS, pursuant to Article III, Section 2 of the Amended, Supplemented and Restated Declaration, all owners other than Declarant are entitled to one (1) vote for each Lot owned, and therefore owners other than Declarant have 277 votes in the Association; and

WHEREAS, out of 1780 total votes in the Association, Declarant currently holds more than seventy-five percent (75%) of the total votes; and

WHEREAS, the Declarant desires to amend certain provisions of the Amended, Supplemented and Restated 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 Amended, Supplemented and Restated Declaration.

2. Stormwater Control Measures. "Stormwater Control Measures" shall mean and refer to the following: all (i) stormwater control measures (including without limitation bio-retention areas, sand filters, retention facilities, detention basins and constructed wetlands which serve more than one lot and which are situated outside of public rights-of-way ("Stormwater

Control Measures") and (ii) permanently protected undisturbed open space and permanently preserved managed open space shown on recorded plats are Common Areas. Declarant, the Association and the City of Raleigh have, simultaneously with the execution of this Amendment, entered into that Stormwater Escrow Protection Easement and Access Maintenance Agreement ("Maintenance Agreement") recorded at Book 10105, Page 149 of the Wake County Public Registry. All maintenance of the stormwater control measures set forth in the Maintenance Agreement and the exhibits thereto shall be performed by the Association. Furthermore, the Association acknowledges that the City of Raleigh may require, in the future, that the Association enter into other stormwater escrow protection agreements with the City of Raleigh with respect to stormwater control measures, and hereby agrees that it shall perform such maintenance as may be set forth in such future agreements.

3. Common Areas. "Common Area" as defined in Article I, Section (m) of the Amended, Supplemented and Restated Declaration shall include all stormwater control measures as described herein.

4. Common Expenses. "Common Expenses," as defined in Article I, Section (n) of the Amended, Supplemented and Restated Declaration, shall include all costs incurred by the Association for the maintenance of stormwater control measures, as set forth in the Maintenance Agreement, and all contributions to the escrow account, as set forth in the Maintenance Agreement.

5. Amendment of Maintenance Agreement. Neither the Maintenance Agreement nor the provisions of this Second Amendment shall be amended without the prior written consent of the Raleigh City Attorney, so long as such consent is required by applicable governmental regulations.

6. Failure to Comply with Maintenance Agreement. The terms of the Maintenance Agreement are required to comply with the Raleigh City Code. The failure to comply with the Maintenance Agreement may subject the Association and its members to significant daily civil penalties and other enforcement actions.

7. Gates at Emergency Access Easements. The Association shall install, maintain and repair any gates and locking mechanisms, as set forth in the Emergency Access Easement Agreement recorded in Deed Book 10105, Page 148 of the Wake County Registry, and all amendments thereto. All expenditures made by the Association for such purposes are Common Expenses.

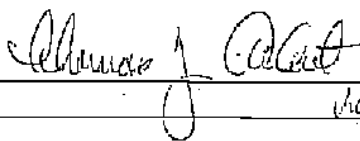
8. Effect of Amendment. The Amended, Supplemented and Restated Declaration is hereby modified to the extent set forth herein, but only to the extent set forth herein. All provisions of the Amended, Supplemented and Restated Declaration not modified by this Amendment remain in full force and effect in accordance with their original terms as set forth in the Amended, Supplemented and Restated Declaration. Paragraphs numbered 4, 5, 6 and 7 herein are added to the Declaration as Article XIII, Sections 16, 17, 18 and 19 respectively.

9. Consent of Association. Pursuant to Article XIII, Section 2 of the Amended, Supplemented and Restated Declaration, the Association has executed this Amendment solely for indexing purposes.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed as of the day and year first above written, and the Association has executed this Amendment for indexing purposes as set forth herein.

TOLL AT BRIER CREEK LIMITED
PARTNERSHIP

By: Toll NCCP Corp., its General Partner

By: 
Vice President

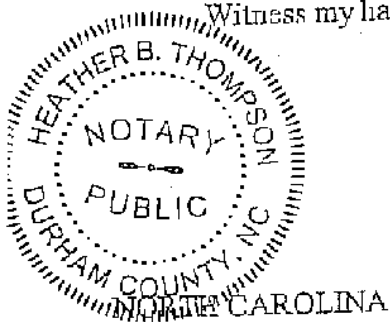
BRIER CREEK COUNTRY CLUB OWNERS
ASSOCIATION, INC.

By: 
President

NORTH CAROLINA, WAKE COUNTY

I, Heather B. Thompson a Notary Public of the County and State aforesaid, certify that Tom Anhalt personally came before me this day and acknowledged that s/he is Vice President of Toll NCGP Corp., a North Carolina corporation, the General Partner of Toll at Brier Creek Limited Partnership, a North Carolina limited partnership, and that by authority duly given and as the act of the corporation, acting as the General Partner of said partnership, he/she, as Vice President, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this 21 day of February, 2003.

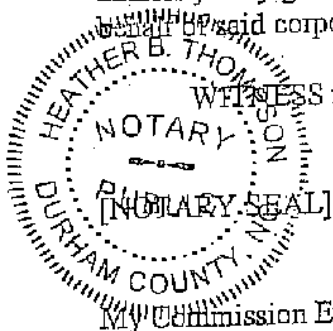


Heather B. Thompson
Notary Public
My Commission Expires: October 4, 2006

WAKE COUNTY

I, Heather B. Thompson a Notary Public of the County and State aforesaid, certify that Brad Nelson personally appeared before me this day and acknowledged that he/she is Asst. Vice President of Brier Creek Country Club Owners Association, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was executed on behalf of said corporation.

WITNESS my hand and official stamp or seal, this 21 day of February, 2003.



Heather B. Thompson
Notary Public

My Commission Expires: October 4, 2006

The foregoing certificate of _____ is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

_____, Register of Deeds for Wake County, North Carolina

By: _____
Deputy/Assistant Register of Deeds

Exhibit A

<u>Document</u>	<u>Lots owned by Declarant</u>
Amended and Restated Declaration	1, 2, 3, 4, 74, 75, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 116, 117, 118, 119, 120, 126, 145, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 169, 171, 173, 174, 176, 179
First Supplement	181, 182, 183, 189, 191, 200, 201, 202, 204, 205, 206
Second Supplement	207, 208, 209, 210, 237, 238, 239, 241, 242, 243, 244, 245, 247, 248, 249, 250, 251, 255, 261, 262, 283, 284, 288, 289, 293, 295, 314
Third Supplement	383, 384, 385, 386, 397, 398, 399, 400, 401, 402, 409, 410, 411, 412, 413, 414, 415, 416, 417
Fourth Supplement	376, 377, 378, 380, 381
Fifth Supplement	315, 316, 317, 318, 319, 320, 321, 322, 323, 325, 326, 327, 328, 329, 330, 332, 333, 334, 336, 337, 338, 339, 340, 349, 358, 366, 367, 369, 370, 371, 372, 373, 374, 375
Sixth Supplement	418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 446, 447, 449, 453, 454
Seventh Supplement	699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804
Eighth Supplement	625, 626, 627, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679,

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Ninth Supplement

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

Wake County, NC 688
Laura H Riddick, Register of Deeds
Presented & Recorded 06/26/2002 14:52:39
Book : 005469 Page : 00099 - 00099

**FIRST AMENDMENT TO
AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BRIER CREEK COUNTRY CLUB COMMUNITY**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIER CREEK COUNTRY CLUB COMMUNITY (the "Amendment") is made and entered into as of this 17th day of June, 2002, by TOLL AT BRIER CREEK LIMITED PARTNERSHIP, a North Carolina limited partnership (the "Declarant").

WHEREAS, Declarant is the Declarant under that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated May 30, 2000, and recorded in Book 8596, Page 935 in the Office of the Wake County Register of Deeds, supplemented by that First Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated September 7, 2000, and recorded in Book 8679, Page 406 in the Office of the Wake County Register of Deeds, that Second Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated October 26, 2000, and recorded in Book 8717, Page 1266 in the Office of the Wake County Register of Deeds, that Third Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated October 1, 2001, and recorded in Book 9110, Page 262 in the Office of the Wake County Register of Deeds, that Fourth Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated December 4, 2001, and recorded in Book 9218, Page 761 in the Office of the Wake County Register of Deeds, that Fifth Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated January 28, 2002, and recorded in Book 9268, Page 936 in the Office of the Wake County Registry of Deeds, and that Sixth Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Creek Country Club Community dated January 28, 2002, and recorded in Book 9284, Page 747 in the Office of the Wake County Registry of Deeds (as supplemented, the "Amended and Restated Declaration") (all capitalized terms not otherwise defined in this Supplemental Declaration shall have the same meaning as in the Amended and Restated Declaration);

WHEREAS, Article XIII, Section 2, of the Declaration provides that the Declaration may be amended or modified at any time by an instrument signed by the Owners of not less than seventy-five percent (75.0%) of the total votes in the Association; and

WHEREAS, Declarant currently holds seventy-five percent (75%) of the total votes in the Association; and

WHEREAS, the Declarant desires 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.

2. Lumley Road. Article VIII, Section 34 of the Declaration is hereby deleted in its entirety and is restated as follows:

No Improvement may be placed or constructed within twenty (20) feet on either side of the right-of-way of Lumley Road, Club Valley Way, Arnold Palmer Drive or Brier Club Lane ("Protected Area") without prior written approval of the Architectural Control Committee. In addition, the following are prohibited within the Protected Area: recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, treehouses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) and vegetable gardens. In addition, no children's play toys or other moveable equipment of any type (such as lawn mowers, garden tools, etc.) may remain repeatedly overnight within such Protected Area.

3. Powers and Duties of the Association. Article VI, Section 1(s) of the Declaration is hereby deleted in its entirety and is restated as follows:

(s) The Association shall establish the amount of and provide for the collection of annual, special, emergency and individual assessments as provided for in this Declaration. The Club Owner shall establish the amount of and collect the Social Membership Assessments;

4. Fences and Walls. Article VIII, Section 15 of the Declaration is hereby deleted in its entirety and is restated as follows:

Except as specifically approved in writing by the Architectural Control Committee, no fence, wall or hedge shall be erected, placed or altered on any Lot nearer to any street fronting such Lot than a rear building corner of the main dwelling constructed on such Lot and shall not exceed six (6) feet in height unless otherwise specifically required by governmental authorities having jurisdiction. All fences on Lots shall be maintained at all times in a structurally sound and attractive manner and in a good state of repair. All fences on Lots shall be of wood, metal (excluding chain link), masonry or material approved by the Declarant (or the Board, when the right to appoint the Architectural Control

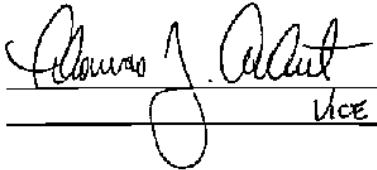
Committee has been assigned to the Board) and no fence shall be constructed, placed or allowed to remain on any Lot until the Owner thereof has obtained approval for such fence from the Architectural Control Committee.

5. 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 in accordance with their original terms as set forth in the Declaration.

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

TOLL AT BRIER CREEK LIMITED
PARTNERSHIP

By: Toll NCGP Corp., its General Partner

By: 
Vice President

NORTH CAROLINA, WAKE COUNTY

I, Susan Ann Alexander a Notary Public of the County and State aforesaid, certify that Thomas J. Anet personally came before me this day and acknowledged that s/he is Vice President of Toll NCGP Corp., a North Carolina corporation, the General Partner of Toll at Brier Creek Limited Partnership, a North Carolina limited partnership, and that by authority duly given and as the act of the corporation, acting as the General Partner of said partnership, he/she, as Vice President, executed the foregoing instrument on behalf of the corporation..



Witness my hand and official seal, this 17 day of June, ~~2002~~ ²⁰⁰²

Susan Ann Alexander
Notary Public
My Commission Expires: 8-4-2006

The foregoing certificate of _____ is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

_____, Register of Deeds for Wake County, North Carolina

By: _____
Deputy/Assistant Register of Deeds

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 009469 Page : 00099 - 00983

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Please retain with original document and submit for rerecording.**



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

North Carolina - Wake County

The foregoing certificate of Susan Ann Alexander

 Notary(ies) Public is (are) certified to be correct. This instrument
and this certificate are duly registered at the date and time and in the book and
page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: Janet Morgan
Deputy
Assistant/Deputy Register of Deeds

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Prepared by ~~and hold for~~ Brian P. Evans, Esq., Kennedy Covington Lobdell & Hickman, L.L.P.

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BRIER CREEK COUNTRY CLUB COMMUNITY**

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DECLARATION OF COVENANTS,
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BRIER CREEK COUNTRY CLUB
COMMUNITY

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIER CREEK COUNTRY CLUB COMMUNITY (this "Declaration") is made this 30th day of MAY, 2000, by TOLL AT BRIER CREEK LIMITED PARTNERSHIP, a North Carolina limited partnership, hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Wake County, North Carolina, as more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes (the "Property"); and

WHEREAS, Declarant intends to develop on the Property an exclusive residential community to be known as Brier Creek Country Club Community (the "Development"); and

WHEREAS, the Property 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"); and

WHEREAS, Declarant subjected certain property (including the Property) to that Declaration of Covenants, Conditions and Restrictions For Brier Creek Country Club Community recorded August 9, 1999 in Book 8385, Page 1 of the Wake County Public Registry, as supplemented by that First Supplemental Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community recorded at Book 8454, Page 444 of the Wake County Public Registry and that Second Supplemental Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community recorded at Book 8480, Page 2130 of the Wake County Public Registry (the "Existing Declaration"); and

WHEREAS, Article XIII, Section 2 of the Existing Declaration provides that the Existing Declaration may be amended or modified at any time prior to December 31, 2029 by an instrument signed by the Owners of not less than seventy-five percent (75%) of the total votes in the Association (as hereinafter defined), provided that Declarant consents to such amendment or modification; and

WHEREAS, Declarant owns all of the real property (including the Property) that was subjected to the Existing Declaration and has one hundred percent (100%) of the total votes in the Association, and now desires to amend and restate the Existing Declaration in its entirety for

the purpose of supplanting and replacing the Existing Declaration in all respects and for all purposes by executing this Declaration; and

WHEREAS, Declarant desires to provide for the protection, preservation and enhancement of the property values and amenities (if any) of the Property, and for the maintenance of the Property and all improvements thereon, and in furtherance of said purposes desires to subject the Property to the easements, covenants, conditions and restrictions hereinafter stated, each and all of which is and are for the benefit of the Property and each owner of a portion thereof; and

WHEREAS, Declarant, to efficiently preserve the value and amenities (if any) in the Property, has incorporated under the laws of the State of North Carolina relating to nonprofit corporations, Brier Creek Country Club Owners Association, Inc. to which shall be delegated and assigned as provided herein the powers of owning, maintaining and administering the Common Area and related facilities and appurtenances, administering and enforcing the terms and provisions of this Declaration, including, without limitation, collecting and disbursing the assessments and charges hereinafter stated, and promoting the recreation, health, safety and welfare of the residents in Brier Creek Country Club Community; and

WHEREAS, although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may include assessments, 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.

NOW, THEREFORE, Declarant hereby declares that the Existing Declaration is void, shall have no further effect, and is hereby replaced and supplanted in its entirety by this Declaration, and that all of the Property shall be held, used, occupied, sold, leased, transferred, mortgaged, and conveyed subject to the easements, covenants, conditions, charges, liens, and restrictions as hereinafter stated in this Declaration, all of which shall run with the Property and all parts thereof and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof or interest therein and on their heirs, successors and assigns, and shall inure to the benefit of each owner of the Property or any part thereof or interest therein.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, as hereinafter defined, or amendment hereto (unless the context shall otherwise require) shall have the following meanings:

(a) "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, North Carolina with regard to a certain phase, section or portion of the Property, as more particularly described in Article II hereof.

(b) "Additional Property" shall mean and refer to any real property, other than the property described in Exhibit A attached hereto, which may be subjected to this Declaration as more particularly set forth in Article II hereof. The Additional Property includes all real property currently owned by Declarant, and any adjacent or nearby property hereafter acquired by Declarant.

(c) "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 Development and to perform certain other functions described in the Declaration.

(d) "Architectural and Landscape Guidelines" shall have the meaning set forth in Article IX hereof.

(e) "Articles" shall mean and refer to the Articles of Incorporation of the Association.

(f) "Association" shall mean and refer to Brier Creek Country Club Owners Association, Inc., a North Carolina nonprofit corporation, and/or any surviving corporation resulting from merger of Brier Creek Country Club Owners Association, Inc. with another association as allowed in this Declaration.

(g) "Board" shall mean and refer to the Board of Directors of the Association.

(h) "Bylaws" shall mean and refer to the Bylaws of the Association as they may now or hereafter exist.

(i) "Club" shall mean and refer to the recreational and social club to be known as Brier Creek Country Club to be located on the Club Property, as more particularly described in Article XII of this Declaration.

(j) "Club Facilities" shall have the meaning set forth in Article XII hereof.

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

(l) "Club Property" shall mean and refer to certain property adjoining the Development on which the Club will be developed and located, the boundary lines of which Club Property shall be shown on a recorded plat or plats of the Development and shall contain the Golf Course. 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.

(m) "Common Area" or "Common Property" or "Common Open Space" or "Open Space" (these terms being used interchangeably herein) shall mean and refer, singularly or collectively, as applicable, to all real property and improvements thereon or associated therewith, which is/are owned or leased by the Association (or by Declarant for later transfer, lease, or assignment to the Association); easements granted to or reserved by or on behalf of the Association (or the Declarant for later transfer or assignment to the Association); and other real property which has been designated as Common Area on any plat recorded in the Office of the Register of Deeds, Wake County, North Carolina by Declarant or by any other party entitled to subject Additional Property to this Declaration, in a Supplemental Declaration, or in a deed or other written instrument, and also shall refer to all personal property owned or leased by the Association and designated as Common Area by the Declarant or the Association. The Common Area is for the common use, enjoyment or benefit of the Owners, and/or for the enhancement or protection of the Property or any part thereof, and may include, without limitation, active and passive recreational areas and facilities. All Common Area shall be subject to the terms and conditions of this Declaration. Common Area also may include, as determined by Declarant in its sole discretion, all water retention and detention ponds and areas, if any, including all stormwater facilities, structures and improvements associated therewith, required to be constructed, repaired, replaced or maintained on or near the Property or any portion thereof by the laws, rules or regulations of any governmental authority having jurisdiction thereof and which is required to handle stormwater runoff from any part or all of the Property. Notwithstanding the foregoing, in no event shall the Club Property or Club Facilities or any portion thereof be considered part of the Common Area or Common Property. Common Area also includes all water lines serving more than one Lot that are located outside any public street right-of-way and all sewer lines serving more than one Lot that are located outside any public street right-of-way and City of Raleigh sanitary sewer easements.

(n) "Common Expenses" shall mean and refer to (i) expenses of administration, Maintenance, improvement, repair or replacement of Common Area or Common Property and/or Landscaped Rights-of-Way, (ii) expenses declared to be or described as Common Expenses by the provisions of this Declaration, (iii) premiums for hazard, liability or other insurance as may be obtained by the Association, (iv) all other expenses incurred by the Association in carrying out its functions and duties under this Declaration, (v) charges for utility services used in connection with the Common Area and Improvements thereon, and (vi) assessments to Brier Creek Property Owners Association, Inc., as set forth in the Master Declaration.

(o) "Declarant" shall mean and refer to Toll at Brier Creek Limited Partnership, its successors and assigns (in whole or in part).

(p) "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brier Creek Country Club Community as it may be amended and supplemented (by Supplemental Declarations) from time to time as herein provided.

(q) "Dedicated Common Area" or "Dedicated Common Property" or "Dedicated Open Space" (these terms being used interchangeably herein) shall mean and refer to all real property conveyed in fee by the Declarant or the Association to the City of Raleigh, North

Carolina or some other governmental entity in satisfaction of some recreational, open space, road maintenance or other requirement of the City of Raleigh or such other governmental entity in connection with the approval of the Development or any part thereof. All Dedicated Common Area shall be exempt from the provisions of this Declaration. If any real property is made subject to this Declaration and subsequently is determined by Declarant to be Dedicated Common Area, Declarant or the Association may convey such property in fee to the City of Raleigh or other appropriate governmental entity free and clear of the provisions of this Declaration and, upon recordation of the deed therefor, this Declaration shall thereafter be deemed to be inapplicable to such property.

(r) "Development" shall mean and refer to the residential development to be developed by Declarant as Brier Creek Country Club Community, into which the Property is being developed.

(s) "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 residence in each patio home, each condominium unit, each townhouse or townhome, each "zero lot line" home and each cluster home 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.

(t) "Entrance Monument Easements" shall mean and refer to the easements reserved by Declarant and granted to the Association in Article X, Section 9 hereof over, under and across certain areas of the Property, for the installation and maintenance of entrance monuments and related improvements for the Development, all as more particularly described in Article X, Section 9.

(u) "Golf Course" shall mean and refer to the golf course facility to be constructed within the Club Property, the boundary lines of which shall be defined by a recorded plat or plats showing such golf course facility.

(v) "Improvement" or "Improvements" shall mean and include all buildings, storage sheds or areas, roofed structures, decks, patios, parking areas, exterior recreational areas, recreational equipment and facilities, mailboxes, exterior antennae, dishes or other apparatus to receive or transmit television or radio or microwave or other signals, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope of a Lot or Dwelling Unit, site preparation of a Lot or Dwelling Unit, landscaping, exterior clotheslines, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any other exterior construction or exterior structure or other exterior improvement which may not be included in any of the foregoing. The definition of

Improvements includes both original Improvements and all later changes and additions to Improvements.

(w) "Landscaped Rights-of-Way" shall mean the medians and other areas within public or private street rights-of-way within or adjoining the Property which are designated as Common Area or Landscaped Rights-of-Way on any plat recorded in the Office of the Register of Deeds, Wake County, North Carolina by Declarant or by any other party entitled to subject Additional Property to the Declaration, and which shall be maintained by the Association as a Common Expense.

(x) "Limited Common Area" or "Limited Common Property" or "Limited Common Open Space" (these terms being used interchangeably herein) shall mean and refer singularly or collectively, as applicable, to all real property and improvements thereon or associated therewith, and to all personal property, which is/are owned or leased by, or located in an easement granted to or reserved by or on behalf of, the Association (or the Declarant for later transfer or assignment to the Association) for the use, improvement, enhancement or benefit of Owners of Lots or Dwelling Units in a particular section or phase located within the Development, or for the enhancement or protection of such portion of the Development, and which has been designated on any plat recorded in the Office of the Register of Deeds, Wake County, North Carolina by Declarant or by any other party entitled to subject Additional Property to the Declaration, as Limited Common Area (the question of such use, improvement, enhancement or benefit being as determined by Declarant). There may be Limited Common Area in one or more sections or phases located within the Development. 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 or Dwelling Units in phases or sections of the Development to which the particular Limited Common Area relates (as determined by the Declarant). Limited Common Area, however, does not include "Sub-Community Property" (as defined below).

(y) "Lot" shall mean and refer to any numbered plot of land which is part of the Property, and which is intended for single-family residential use, and which is shown on any plat in the Office of the Register of Deeds, Wake County, North Carolina which Declarant has recorded, caused to be recorded or approved for recordation. Declarant hereby reserves the right to reconfigure, at any time and from time to time, without the consent of the Owners or Members of the Association, the boundaries of any Lot or Dwelling Unit owned by the Declarant and to thereby reconfigure Lots or Dwelling Units, create streets, create additional Lots or Dwelling Units, eliminate existing Lots or Dwelling Units, create additional Common Area or reduce proposed Common Area not yet conveyed to the Association (provided that no such reduction violates any applicable ordinances of the City of Raleigh or other entity having governmental jurisdiction over such Common Area). Declarant's exercise of this right shall be evidenced by the recording of a revised map of the affected Lot, Dwelling Unit or Common Area. Upon the recording of any such revised map, each Lot or Dwelling Unit shown on the previously recorded

map that has been revised by the new map shall cease to be a "Lot" or "Dwelling Unit" as defined herein and each revised Lot or Dwelling Unit as shown on the new map shall be a "Lot" or "Dwelling Unit" as defined herein.

(z) "Maintain", "Maintenance" or any substantially similar term used in this Declaration, when applied to a power or duty of the Association shall mean and include, without limitation, the right to maintain, repair, replace, reconstruct, improve, clean, landscape, operate and use the improvement, property or other item which is the subject thereof.

(aa) "Member" shall mean and refer to each Owner of a Lot or Dwelling Unit who is a member of the Association as provided in this Declaration.

(bb) "Owner" shall mean and refer to the owner of record as shown in the Wake County, North Carolina Registry, whether one or more persons or entities, of fee simple title to any Lot or Dwelling Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The definition of "Owner" shall include Sub-Associations as defined herein for purposes of enforcement of this Declaration.

(cc) "Person" shall mean and refer to any individual, corporation, partnership, association, limited liability company, trust or other legal entity.

(dd) "Property" shall mean the Property described on Exhibit "A" attached hereto and incorporated herein by reference and any and all other Additional Property (as herein defined) hereinafter made subject to this Declaration by any Supplemental Declaration, Additional Declaration, or merger or consolidation as provided hereinbelow.

(ee) "Roadways" shall mean and refer to the public and private streets located within the Development.

(ff) "Sub-Association" shall mean and refer to any separate owners association established pursuant to or in connection with an Additional Declaration, which Sub-Association may own or lease Sub-Community Property in connection with such Additional Declaration and may assess those Owners of Property subject to such Additional Declaration for the Maintenance of such Sub-Community Property.

(gg) "Sub-Community Property" shall mean and refer to all real property and improvements thereon or associated therewith, which is/are owned or leased by any Sub-Association (or by Declarant for later transfer, lease, or assignment to the Sub-Association) established pursuant to or in connection with an Additional Declaration, and shall be common area benefiting only Additional Property subjected to an Additional Declaration. Such Sub-Community Property shall not be Maintained or controlled by the Association, and no Owner shall have any rights or easements therein except pursuant to such Additional Declaration. Provided, however, that certain areas within the Additional Property subject to the Additional Declaration may be established as Common Area pursuant to this Declaration for use by all Owners in the Development, and which Common Area will be Maintained and controlled by the Association, which Common Area shall not be Sub-Community Property.

(hh) "Supplemental Declaration" shall mean and refer to any residential declaration of covenants, conditions, and restrictions filed in the Office of the Register of Deeds of Wake County, North Carolina with regard to Additional Property as more particularly set forth in Article II hereof.

ARTICLE II

PROPERTY

Section 1. Property Made Subject To Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, used, occupied, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the terms, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration. Declarant shall have the right, as set forth below, but shall have no obligation, to subject the Additional Property to this Declaration.

Section 2. Annexation of Additional Property by Declarant Within Twenty (20) Years. If within twenty (20) years of the date of recordation of this Declaration, Declarant is the Owner of any real property in Wake County, North Carolina within the Brier Creek development, which Declarant currently owns, or which Declarant hereafter acquires and which is contiguous or adjacent to the Property, which Declarant desires to subject to this Declaration (such real property being referred to herein as "Additional Property"), it may do so by filing of record a Supplemental Declaration or Additional Declaration which shall extend this Declaration to such Additional Property; provided, however, that such Supplemental Declaration or Additional Declaration, as applied to the Additional Property covered thereby, may include such specific additional terms, covenants, conditions, restrictions, easements, charges and liens, not inconsistent with this Declaration, as may be set forth in such Supplemental Declaration. There shall be no requirement that any party other than Declarant consent to, approve, or execute any such Supplemental Declaration or Additional Declaration.

Section 3. Other Annexations of Additional Property. If at any time Persons other than the Declarant desire to subject real property (also referred to as Additional Property) to this Declaration, such real property may only be subjected hereto if the owner thereof, and Declarant, for a period of twenty (20) years from the date of recordation of this Declaration, consents in writing. If, after twenty (20) years from the date of recordation of this Declaration, Declarant or any other Person desires to subject real property to this Declaration, the owner of such property to be annexed must consent in writing. All subjection to this Declaration authorized by this Section 3 must be approved by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. Upon such consent and/or affirmative vote, such Additional Property shall be subjected to this Declaration by the recordation in the Wake County, North Carolina Registry of a Supplemental Declaration or Additional Declaration signed by the owner of such Additional Property, by Declarant (if such

annexation occurs within twenty (20) years after the filing of this Declaration) and by the Association.

Section 4. Contents of Supplemental Declaration. Each Supplemental Declaration shall be effective upon recordation in the Wake County, North Carolina Registry, shall describe the lands annexed and shall incorporate the provisions of this Declaration, either by reference hereto or by fully setting out the provisions hereof. Such Supplemental Declaration need not be in any specific form (for example, it may be contained in a deed from Declarant conveying the real property being subjected to this Declaration), but shall clearly indicate the intention to subject the Additional Property to this Declaration. A Supplemental Declaration may contain such other terms and conditions, not inconsistent herewith, as the parties subjecting the Additional Property to this Declaration may agree upon. Nothing contained herein shall prohibit the owner of any Additional Property made subject to this Declaration by Supplemental Declaration from subjecting such Additional Property to other covenants, conditions and restrictions not inconsistent with the terms of this Declaration.

Section 5. Additional Declaration. Each Additional Declaration shall be effective upon recordation in the Wake County, North Carolina Registry, shall describe the lands annexed and shall incorporate the provisions of this Declaration, either by reference hereto or by fully setting out the provisions hereof. Such Additional Declaration may contain additional provisions applicable only to that certain phase or portion of the Additional Property to be included in the Development (which may be somewhat inconsistent with the terms of this Declaration due to the particular nature of such Additional Property), and may provide for the creation of a separate owners association to also have jurisdiction over such portion or phase of the Property.

Section 6. Merger or Consolidation. Upon a merger or consolidation of the Association with another association which is a non-profit corporation composed of owners of residential real property (which merger or consolidation may occur under the provisions of applicable laws or the provisions of this Declaration, the Articles or the Bylaws not inconsistent with such applicable laws - the fact that this Declaration, the Articles or the Bylaws require a greater percentage of votes for approval of merger than the applicable laws is not inconsistent with said laws), the properties, rights and obligations of the Association may, by operation of the law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association and shall administer the terms and provisions of this Declaration and any applicable Supplemental Declaration affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. The plan of merger or consolidation between the Association and any such other association may contain terms and provisions with respect to Common Property owned by the Association or such other association as may be approved by the Association and such other association in the votes authorizing the merger and, to the extent that such provisions may conflict with the provisions of this Declaration, the provisions contained in the approved plan of merger or consolidation shall control. No such merger or consolidation, however, shall effect any revocation, change or addition to the terms and provisions of this Declaration or any

Supplemental Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 7. Changes to this Declaration or Additional or Supplementary Declarations Requiring Declarant's Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, for so long as there is a Class B Membership, 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 and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

Section 8. Conveyance of Common Areas in Newly Annexed Lands. Title to Common Areas located in Additional Properties shall be conveyed to the Association prior to the conveyance of the first Lot in the newly annexed area in the same manner as set forth in Article IV, Section 3 hereof.

Section 9. Cluster Unit Development. This Property is part of a cluster unit development approved by the City of Raleigh in which residential transfers are permitted; therefore, 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 of Raleigh approval of additional dwellings or further subdividing of Lots. Notwithstanding anything contained herein to the contrary, the Development, including any Additional Property, unless otherwise approved by the City of Raleigh or other governmental entity having such authority, shall not contain more than 1500 Dwelling Units, shall not exceed a total acreage of 630 acres, and shall have a maximum density not to exceed forty (40) Dwelling Units per acre.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Each and every Owner of a Lot or Dwelling Unit shall automatically become and be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling Unit, and the Board may make reasonable rules relating to the proof of ownership of a Lot or Dwelling Unit. The Club Owner shall not be a Member of or have voting rights in the Association.

Section 2. Classes of Voting Members. Subject to the rights of Declarant reserved in this Section 2, the Association shall have two classes of voting membership as follows:

Class A. Class A Members shall be all Owners of Lots, with the exception of Declarant until such time as Declarant's Class B Membership is converted to Class A Membership as provided in this Article. Unless otherwise provided by a Supplemental or Additional Declaration as set forth in Section 4 hereof, a Class A Member shall be entitled to one (1) vote for each Lot or Dwelling Unit owned by such Class A Member at the time notice is given of the particular meeting at which Class A membership votes are eligible to be cast.

Provided, when two (2) or more Persons own or hold interests in any Lot or Dwelling Unit, all such Persons shall be Class A Members, and the one (1) vote for such Lot or Dwelling Unit shall be exercised as they, among themselves, determine, but fractional voting shall be prohibited and in connection with any particular vote no more than one Class A membership (1) vote shall be cast with respect to each Lot or Dwelling Unit.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot or Dwelling Unit owned by the Class B Member at the time notice is given of the particular meeting at which the Class B votes are eligible to be cast.

The Class B Membership shall terminate and be converted to Class A Membership upon the happening of the first to occur of the following:

(a) when the total votes outstanding in Class A Membership equal the total votes outstanding in Class B Membership. Provided, however, and notwithstanding anything to the contrary that may appear herein or in the Declaration, if at any time prior to twenty (20) years from the date of recordation of this Declaration, the Class B Membership terminates for the foregoing reason and thereafter Declarant, pursuant to Section 2 of Article II of the Declaration, annexes Additional Property to the Declaration such that, following such annexation, if votes are allocated to the Lots or Dwelling Units owned by Declarant at the rate of three (3) votes per Lot or Dwelling Unit Declarant's total outstanding votes would exceed the total outstanding votes of the Class A Members, the Class B Membership shall be reinstated until such time as it again terminates due to one of the events of termination stated herein. Prior to twenty (20) years from the date of recordation of this Declaration or the voluntary termination of the Class B Membership by Declarant, whichever first occurs, there shall be no limitation on the number of times the Class B Membership may terminate and be reinstated in accordance with the provisions of this paragraph (a); or

(b) voluntary termination by Declarant; or

(c) that date which is twenty (20) years from the date of recordation of this Declaration.

Section 3. Voting, Quorum and Notice Requirements. Except as may be otherwise specifically set forth in this Declaration, the Articles or the Bylaws, the vote of the majority of the aggregate votes entitled to be cast by all classes of the Members present, or represented by legitimate proxy, at a legally constituted (duly called) meeting of the Association at which a quorum is present, shall be the act of the Members with respect to the matter that is the subject of such vote. The number of votes required to constitute a quorum shall be as set forth herein or in the Bylaws. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein or in the Bylaws.

Section 4. Termination Of Membership. A Person's membership in the Association shall terminate automatically whenever such Person ceases to be an Owner, but such termination shall not release or relieve any such Person from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of such Person's

ownership of a Lot or Dwelling Unit, or impair any rights or remedies which the Association or any other Member has with regard to such former Member.

Section 5. Limited Common Property. With respect to matters specifically affecting Limited Common Property (as contrasted with matters affecting Common Property or the Association), only those Class A Members (and the Class B Member) who own Lots or Dwelling Units in the particular section or phase of the Development to which such Limited Common Property relates shall be entitled to vote on and receive notice of matters affecting that particular Limited Common Property, and the quorum requirements with respect to any required votes affecting such Limited Common Property shall be based upon the number of Members entitled to vote on such matters and not based upon the entire membership of the Association.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of this Declaration (and subject to the provisions of any Supplemental Declaration or Additional Declaration which may be applicable and not inconsistent herewith), every Owner shall have a right and easement of use and enjoyment in and to the Common Area, and every Owner of a Lot or Dwelling Unit in a phase or section of the Development which has Limited Common Area shall have a right and easement of use and enjoyment in and to such Limited Common Area, which rights and easements shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit; PROVIDED, HOWEVER, such easement shall not give such person the right to make alterations, additions or improvements to any part of the Common Area or Limited Common Area. Subject to the terms of this Declaration, the Articles and the Bylaws, any Owner may delegate such Owner's right of use and enjoyment in and to the Common Area or Limited Common Area to the members of such Owner's family, such Owner's tenant or contract purchasers who reside on the Owner's Lot or Dwelling Unit, or to such Owner's guests.

Section 2. Declarant's Easements in the Common Area. Declarant hereby declares and establishes, for its benefit and the benefit of Declarant's contractors, agents and designees, a right and easement over, across, upon and under the Common Area for any and all activities associated with the development of the Property, including but not limited to grading, landscaping and the construction of improvements upon the Common Area.

Section 3. Title to the Common Area. Prior to the conveyance of the first Lot in each recorded phase, section, or portion of the Property, Declarant shall convey to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Common Area, if any, shown on any plat of that phase, section, or part of the Property recorded by Declarant, which conveyance shall be free and clear of all encumbrances and liens other than the lien of current taxes not yet due and payable, utility easements, greenway easements, and drainage easements of record in Wake County, North Carolina, the terms and conditions of this Declaration, specifically including Declarant's easements over and across the Common Area as set forth in Section 2 of this Article IV, and any applicable Supplemental Declaration. Common

Area may be conveyed by Declarant to the Association in whole or in part from time to time. If the Declarant conveys any Common Area to the Association, and thereafter, pursuant to the rights reserved by Declarant, revises the boundaries of such Common Area and any Lots or Dwelling Units adjoining such Common Area, the Declarant and the Association shall in accordance with Section 4 (j) of this Article IV execute such documents as may be reasonably required by the Declarant to correct the boundaries of the Common Area and adjoining Lots or Dwelling Units in accordance with the revisions made thereto.

Section 4. Extent of Owners' Easement. The rights and easements of enjoyment created in Section 1 of this Article IV hereby shall be subject to the following:

(a) all provisions of this Declaration affecting such rights and easements, including without limitation those contained in this Article IV;

(b) the right of the Association to prescribe and enforce regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Members who may use the Common Area);

(c) the right of the Association to borrow money for the purpose of improving, repairing, replacing and maintaining the Common Area and facilities and/or the Landscaped Rights-of-Way and in connection with such borrowing to mortgage the Common Area, provided the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Association and the Owners hereunder (Note: the term "mortgage" when used in this Declaration also include a deed of trust and any other type of security interest in real or personal property).

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

(e) the right of the Association to suspend the voting rights and right to use recreational facilities or the Common Area if any, by an Owner (including his tenants) for any period during which any assessment against such Owner's Lot or Dwelling Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;

(f) the right of the Association (subject to the ordinances of the City of Raleigh) to charge reasonable admission and other fees for the use of recreational facilities on the Common Area, if any;

(g) subject to the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting at which a quorum is present, the right of the Association to dedicate or transfer title to all or any part of the Common Area to any public agency, authority, or utility for such purposes and upon such conditions as the Board, or the Members who exercise the required affirmative vote (if the motion or resolution passed by such vote contains such conditions), may determine. With respect to Limited Common Area, only those Class A Members who are Owners of Lots or

Dwelling Units in the phase or section of the Development which has such Limited Common Area shall be considered in determining the total number of votes entitled to be cast and what constitutes the required two-thirds (2/3) thereof.

(h) easements for drainage, storm water control or removal, utilities, signs and other matters shown on recorded plats of the Common Area or created or reserved by Declarant prior to or simultaneously with conveyance of such Common Area by Declarant to the Association, and/or granted by the Association as permitted by this Declaration.

(i) subject to the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting at which a quorum is present, the right of the Association to lease, grant an easement in, over, under or upon, or transfer title to, any part or all of the Common Area to another nonprofit corporation or association organized and existing, with respect to property owned by such corporation or association, for purposes substantially similar to the Association with respect to the Common Property. Upon the approval of the Board, the Association may lease from any such nonprofit corporation, or association or accept transfer of title of or an easement in, any part or all of the property owned by such corporation or association. With respect to Limited Common Area, only those Class A Members who are Owners of Lots or Dwelling Units in the phase or section of the Development which has such Limited Common Area shall be considered in determining the total number of votes entitled to be cast and what constitutes the required two-thirds (2/3) thereof.

(j) Exchange of Common Area. The Association, acting with the consent of the Members of each class present or represented by proxy at a duly called meeting of the Association at which a quorum is present, at any time and from time to time may exchange with Declarant, or with any Owner, or with any other Person with whom such an exchange is determined by the Board to be in the best interests of the Association, a portion of the real property Common Area for a portion of the real property owned by the Declarant, such Owner or such Person, provided that the real property acquired by the Association in the exchange: (i) is free and clear of, all encumbrances except for this Declaration and any applicable Supplemental or Additional Declaration and subdivision covenants, and easements for drainage, utilities, and greenways; (ii) is contiguous to a Lot, Dwelling Unit or some portion of the Common Area, or Roadways; and (iii) has like area and utility, or is of approximately the same market value, as the portion of the Common Area exchanged; and (iv) the acreage and configuration of the remaining Common Area equals or exceeds the requirements of the Raleigh City Code (if applicable). In addition to the foregoing, the Association shall have the right to exchange portions of Common Property with the Declarant or with any Owner without the consent of the Members (as determined by the Board) for other real property for the purpose of eliminating encroachments or improvements onto portions of the Common Property to be retained by the Association or for the purpose of correcting any setback violations or encroachments of any improvements located on a Lot or Dwelling Unit.

Section 5. Leases Of Lots or Dwelling Units. Any lease agreement between an Owner and a lessee for the lease of such Owner's Lot or Dwelling Unit shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this

Declaration and the Articles and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. Each Owner shall provide the Association copies of any and all leases of such Owner's Lot or Dwelling upon request.

Section 6. Ingress and Egress. Notwithstanding anything to the contrary appearing in this Declaration, if ingress and egress to any Lot or Dwelling Unit is through any part of the Common Area, any conveyance or encumbrance of such part of the Common Area shall be subject to an easement for ingress and egress for such Lot or Dwelling Unit over and upon such portion of the Common Area as is designated for ingress and egress (by a public or private street or right of way) and shown on a recorded plat of such Common Area, Lot or Dwelling Unit affected thereby or created or reserved by Declarant in an instrument recorded in the Wake County, North Carolina Registry.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Subject to the terms and conditions of this Declaration, each Owner of a Lot or Dwelling Unit, 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 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): (i) annual assessments or charges; (ii) special assessments for capital improvements or unusual or emergency matters; (iii) Social Membership Assessments as set forth in Section 4 of this Article V; and (iv) individual assessments levied against an Owner to reimburse the Association for extra costs for maintenance and/or repairs caused by the failure of such Owner to maintain such Owner's individual Lot or Dwelling Unit and Improvements thereon, or for damage to or destruction of Common Area by the Owner or the Owner's guests, tenants, licensees, agents, or family members, all of such assessments and charges to be fixed, established and collected as hereinafter provided. The annual, special, Social Membership and individual assessments, together with such interest and late charges thereon and costs of collection thereof (including, without limitation, reasonable attorney fees) as are hereinafter provided shall be a charge and continuing lien on the Lot or Dwelling Unit against which each such assessment is made. Each such assessment, together with such interest and late charges thereon and costs of collection thereof (including, without limitation, reasonable attorney fees) as are hereinafter provided also shall be the personal and continuing obligation of the Owner of such Lot or Dwelling Unit at the time when the assessment became due. An Owner's personal obligation for payment of such assessments shall not pass to such Owner's successors in title unless expressly assumed by them, but the lien against such Owner's Lot or Dwelling Unit as established in this Declaration shall continue in effect (unless terminated as otherwise provided herein). No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of such Owner's Lot or Dwelling Unit or the Common Area. This Declaration shall, pursuant to Section 6-21.2 of the North Carolina General Statutes, constitute an evidence of indebtedness with respect to the

obligation to pay each assessment provided for herein. Notwithstanding the foregoing, the Club Owner shall have no obligation to pay assessments set forth herein with respect to the Club Property.

Section 2. Purpose and Use of Assessments. The assessments levied by the Association shall be used for the purposes of implementing and enforcing the terms and provisions hereof and of any Supplemental Declaration, paying the Common Expenses and promoting the health, safety, enjoyment and welfare of the Owners of Lots and Dwelling Units, and in particular, but without limitation, for the (i) improvement, use, operation, repair, replacement and maintenance of the Common Area, Landscaped Rights-of-Way and all improvements located therein or thereon; (ii) payment of premiums for hazard insurance in connection with the Common Area, and the Landscaped Rights-of-Way, and any improvements or facilities thereon; (iii) payment of public liability and other insurance of the Association; (iv) paying the costs of labor, equipment (including the expense of leasing any equipment) and material required for the Common Area, the Landscaped Rights-of-Way, and the improvement, maintenance, repair, replacement, management, protection, preservation, use and supervision thereof; (v) payment of all ad valorem taxes and public assessments levied on the Common Area owned in fee by the Association; (vi) payment of any assessments owed by the Owners or by the Association pursuant to the Master Declaration; (vii) payments to the Club Owner (if any) for contribution to the maintenance of Golf Course landscape easement areas and sign or entrance easement areas located within the Development or on Club Property, but which benefit the Development as shall be more specifically shown on the recorded plats of the Development (provided that, unless otherwise agreed to in writing, the Club Owner shall not be obligated to Maintain such areas and the Association may assume responsibility for Maintenance of such areas with the consent of the Club Owner); (viii) payments for the maintenance and/or repair of any stormwater drainage facilities located on the Club Property if not maintained by the Club Owner pursuant to Article X, Section 8; and (ix) carrying out the purposes and duties of the Association as stated in its Articles and Bylaws and as stated in this Declaration.

Without limiting the generality of the above-described purposes, the assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planting) and maintenance of any common facilities located or to be located in the Common Area and Landscaped Rights of Way, and any landscaping easement areas or Entrance Monument easement areas as shall be indicated on the recorded plats of the Development, (which areas may be owned by the Club Owner and may benefit both the Owners in the Development and the Golf Course or other Club Property), including the following: (a) providing grass cutting, fertilizing, weed and insect treatments and maintenance of trees, removal of litter, shrubbery and flowers located on or within Common Areas, Landscaped Rights of Way, and landscaping easement areas and sign or entrance monument areas; (b) providing Maintenance and operation of all walls, fountains, ponds, waterfalls, monuments, irrigation facilities, sidewalks, fences, signage, lighting or other structures in facilities located on or within any of the areas identified as Common Areas, Landscaped Rights of Way, and Golf Course landscape easement areas and sign or Entrance Monument Easements; and (c) providing maintenance and operation of any other special features of the Development, if any.

As determined in its discretion, the Board shall establish and maintain an adequate reserve fund for the periodic Maintenance, repair and replacement of improvement of Improvements to or in the Common Property, Landscaped Rights-of-Way, payments to the Club Owner for Maintenance of certain Golf Course landscape easement areas shared by the Development and the Club Property, and those other portions of the Development, if any, that the Association is obligated to maintain. Such reserve fund shall be established out of the funds collected through annual assessments.

All funds collected by the Association shall be treated as the separate property of the Association, and such funds may be applied by the Association for the purposes stated in this Declaration. As funds pursuant to any assessment are paid to the Association by any Owner, such funds may be commingled with funds paid to the Association by other Owners. Although all funds and assets of the Association shall be held for the benefit of the Members of the Association as provided in this Declaration, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer, such Member's interest therein, except as an appurtenance to such Member's Lot or Dwelling Unit. When any Owner shall cease to be a Member of the Association, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association or any portion thereof which may have been paid to the Association by such Owner or acquired with any funds paid to the Association by such Owner, as all funds which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used by the Association as provided in this Declaration.

Section 3. Maximum Annual Assessment and Annual Assessment. The maximum annual assessment for the calendar year beginning January 1, 2000, and for successive calendar years thereafter shall be established by Board subject to this Article V. Within thirty (30) days after adoption of the yearly budget, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at such meeting, and the budget is ratified unless at that meeting the Owners entitled to exercise fifty-one percent (51%) of the votes in the Association reject the budget. In no event may the Board or membership of the Association decrease the amount of the annual assessment for any calendar year from the amount of the annual assessment for the previous calendar year.

Section 4. 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 11 of this Article V.

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 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized herein, the Association may levy in any calendar year a special assessment for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and the cost to purchase Lots and Dwelling Units at foreclosure sales of association liens, and repair costs for drainage facilities and ponds located on Club Property as allowed in Article X, Section 8, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. A special assessment shall be due and payable as established by the vote of the Members approving the special assessment, or, if not established by such vote of the Members, as established by the Board.

Section 6. Individual Assessment for Repairs. In the event that any Owner fails to maintain his individual Lot or Dwelling Unit and Improvements thereon or in the event that any portion of any Common Area is damaged or destroyed by an Owner or any of such Owner's guests, tenants, licensees, agents, or family members, (as also referenced in Article VIII hereof), such Owner hereby authorizes the Association to repair or replace such damaged or destroyed area in a good and workmanlike manner. Provided that, prior to commencement of the Maintenance, repair or replacement of an individual Lot or Dwelling Unit, the Board of the Association shall provide the Owner thereof written notice setting forth the required Maintenance, repair or replacement, and the Owner of such Lot or Dwelling Unit shall have a period of ten (10) days from receipt of such notice in which to complete the required Maintenance, repair or replacement to the satisfaction of the Board. The amount reasonably required for such repairs, Maintenance, or replacement, including all labor and materials used in connection therewith, shall become an individual assessment upon the Lot or Dwelling Unit of such Owner, due and payable as determined by the Board.

Section 7. Emergency Assessments. In addition to the annual assessments, special assessments, Social Membership Assessments and individual assessments authorized herein, in the event of an "Emergency" (as hereinafter defined), the Board, on behalf of the Association, in the Board's sole discretion, may levy an emergency assessment for the purpose of taking preventative, protective, stabilizing, or remedial actions to protect the Common Area or any Improvements located thereon, and to further reconstruct, repair or replace any portion of the

Property or Improvements following such Emergency. An "Emergency" for purposes of this Section 7 includes, but is not limited to, floods, hurricanes, tornadoes, fires, acts of God or other naturally occurring phenomena. An emergency assessment shall be due and payable as established by the Board.

Section 8. Notice and Quorum For Actions Authorized Under Section 5. Written notice of any meeting of the Association called for the purpose of taking any action required to be taken by the membership under the preceding Section 5 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members plus proxies entitled to cast sixty percent (60%) of the combined total number of votes of all classes of membership shall constitute a quorum. If the required quorum is not present at the first such meeting, subsequent meeting(s) may be called subject to the same notice requirement, and the required quorum at the subsequent meeting(s) shall be one-half (1/2) of the required quorum at the immediately preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

Section 9. Rate of Assessments.

(a) Except as otherwise set forth herein, assessments other than individual assessments must be fixed at a uniform rate for all Lots. Annual Assessments other than individual or special assessments may be collected on a monthly, quarterly, annual or other basis, as determined by the Board, and may be collected in advance. The amounts and times for payment of the Social Membership Assessments shall be established by the Club Owner. The Board shall have the power at any time and from time to time, in its sole discretion and upon such terms and conditions as the Board deems appropriate, to allow percentage discounts to Owners who pay assessments earlier than would otherwise be required for such payments; provided, however, all such discounts shall be made available to and applied uniformly to the Owners of all Lots that are subject to the assessment to which the discount applies.

(b) Anything to the contrary herein notwithstanding, the annual assessment for each Lot shall be in an amount equal to ten percent (10%) of the annual assessment established by the Board until such Lot has been improved with a Dwelling Unit and such Dwelling Unit is first occupied by a homeowner for residential purposes; thereafter, the annual assessment for such Lot shall be the full amount established by the Board.

(c) Notwithstanding anything to the contrary that may appear in this Declaration, all Lots and Dwelling Units owned by Declarant shall be exempt from annual, special, Social Membership and individual assessments, until the initial sale of such Lot or Dwelling Unit to a third party.

Section 10. Commencement of Assessments: Establishing the Amount: Due Dates. The annual assessment shall commence with respect to the Dwelling Units and Lots in any phase or section of the Development on the first day of the month immediately following the month in which the first Lot or Dwelling Unit in such phase or section of the Development is conveyed to the Owner by Declarant, and the amount of the first annual assessment applicable to the Lot or

Dwelling Unit shall be prorated in accordance with the number of months remaining in the calendar year on and after it becomes applicable to the Lot or Dwelling Unit. For the purposes of this Article V, Section 10 only, in establishing the time when an annual assessment, an individual assessment or special assessment is applicable to a Lot or Dwelling Unit, the term "Declarant" shall include any Person to whom the Declarant or such Person has conveyed an undeveloped portion of the Development for development by such Person into Lots or Dwelling Units (it being contemplated by Declarant that there may be instances in which a certain section or phase of the Property is conveyed to another Person who will develop same into residential Lots or residential property), and who has been designated as such by the Declarant. A special assessment and/or individual assessment shall be applicable to each Lot or Dwelling Unit subject to this Declaration at the time such assessment is established. The Board shall establish the amount of the annual assessment for the ensuing calendar year at least thirty (30) days in advance of the beginning of such year, and, if the amount of the annual assessment changes from the amount for the current year, the Board shall cause written notice of the new annual assessment to be sent to at least one of the Owners of each Lot or Dwelling Unit subject to the assessment. Subject to any limitations contained in this Declaration, the Articles, the Bylaws or any applicable laws, the Board is empowered at any time and from time to time to establish the due dates and penalties for late payment of annual and special assessments. The failure of the Board to establish the amount of any annual assessment as required herein shall not be a waiver or modification in any respect of the provisions of this Declaration, or a waiver of the Board's right to establish the annual assessment at any time during the calendar year to which it is applicable, or a release of any Owner from the obligation to pay the assessment or any installment thereof for that or any subsequent year, and the annual assessment established for the immediately preceding calendar year shall continue in effect until the Board has established the new annual assessment.

Section 11. Certification of Assessments Paid. The Association (or any Person employed by the Association to assist in the management of the Association and collection of assessments and authorized to issue such certificates) shall, upon demand and for a reasonable charge or fee, furnish a certificate signed by an officer of the Association (or the Person or an officer, partner or agent of such Person having authority to issue such certificate) setting forth whether or not the assessments on a particular Lot or Dwelling Unit have been paid. A properly executed certificate of the Association (or authorized Person) as to the status of the payment of such assessments shall be binding on the Association, as of the date of its issuance, with respect to the assessments addressed therein.

Section 12. Assessment Lien and Remedies for Non-Payment. Except as otherwise provided in this Declaration or by applicable laws, the aforesaid lien shall be superior to all other liens and charges against each Lot or Dwelling Unit and the Improvements thereon. The Board shall have the power to subordinate the aforesaid assessment lien to any other lien, and such power shall be entirely discretionary with the Board. To evidence for the public record the amount of any assessment lien, the Board may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Dwelling Unit subject to such lien, and a description of the Lot or Dwelling Unit. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina. The lien of any assessment may be enforced by the

foreclosure of the defaulting Owner's Lot or Dwelling Unit and Improvements thereon by the Association in like manner as a deed of trust with power of sale on real property, or the Association may institute suit against the Owner personally obligated to pay the assessments, or the lien may be enforced by judicial foreclosure or the Association may pursue one or more of the foregoing remedies and/or may seek any other available remedy or relief. With respect to any such remedy pursued by the Association, whether judicial or non-judicial, in addition to the amount of the unpaid assessment, and interest and late charges thereon, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the Owner's Lot or Dwelling Unit and Improvements thereon at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. In the event that any of the foregoing remedies by the Association results in the entry of a judgment against an Owner and in favor of the Association, then the Association shall be further empowered to execute on that judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

Any assessments which are not paid by the due date shall be delinquent. If the assessment is not paid in full within thirty (30) days immediately following the due date, interest shall accrue on the unpaid portion of the assessment at the rate of interest established from time to time by the Board, not to exceed the greater of the highest lawful rate per annum or sixteen percent (16%) per annum. The Board shall establish the applicable rate of interest at the time it establishes the annual assessment each year, and shall notify Owners of the established rate in the same manner (or in the same notice) as required for notification of any change in the annual assessment. When the Board establishes the applicable rate of interest for any year, that rate shall continue in effect until such time as a new rate of interest is established by the Board. If, for any reason, it is determined that the Board is without discretion or authority to establish the applicable interest rate, then the applicable interest rate shall be the lesser of the highest lawful rate per annum or sixteen percent (16%) per annum.

In addition to the foregoing, the Board may establish from time to time a late payment charge, in such amount (not to exceed 10% of the maximum annual assessment per month) and beginning on such date as determined by the Board. The Board shall establish the applicable late payment charge at the time it establishes the annual assessment each year, and shall notify Owners of the established charge in the same manner (or in the same notice) as required for notification of any change in the annual assessment. When the Board establishes a late payment charge, that charge shall continue in effect until such time as a new charge is established by the Board.

The Board, in its discretion, may waive in whole or in part the imposition of interest and late payment charges with respect to any delinquent assessment.

Section 13. Working Capital Fund. At the time of closing of the initial sale of each Lot by Declarant to a third party purchaser, a sum equal to three months annual assessments for the Lot shall be collected from the purchaser of such Lot and transferred to the Association to be held as a working capital fund. In addition, at the time of such closing Declarant may elect, but shall not be obligated, to pay to the Association the sum of Five Hundred and No/100 Dollars (\$500.00) to be held in such working capital fund. The purpose of said fund is to insure that the

Association will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 14. Subordination of the Lien to Mortgages. All liens against a Lot or Dwelling Unit provided for herein shall be subordinate and inferior to the lien of any first mortgage or deed of trust on such Lot or Dwelling Unit. Except as otherwise provided herein, sale of or transfer of title to any Lot shall not affect the liens against such Lot or Dwelling Unit established by this Declaration; provided, however, the sale of or transfer of title to any Lot or Dwelling Unit which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish all such liens with respect to all payments that became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot or Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust on the Lot or Dwelling Unit.

Section 15. Exempt Property. All Common Area, Limited Common Area, Dedicated Common Area, Sub-Community Property, and real property owned by governmental entities, and all Lots, Dwelling Units, and other portions of the Property owned by Declarant, shall be exempt from the assessments and liens for same created herein. Provided, however, no real property or improvements subject to this Declaration and occupied and used for residential dwelling purposes shall be exempt from such assessments and liens, other than Lots and Dwelling Units owned by Declarant.

Section 16. Additional Assessments. Declarant reserves the right, by recordation of Supplemental Declarations, Additional Declarations or other documents, to subject Lots or Dwelling Units located in one or more phases or sections in the Development to 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, Limited Common Property or Sub-Community Property including, without limitation, any one or more of the following: (i) private streets; (ii) specialized subdivision entrances or other features; (iii) specialized subdivision landscaping features; and (iv) exterior maintenance of Dwelling Units.

All of the provisions of this Declaration relating to annual and special assessments shall apply to the additional annual and special assessments, with the following exceptions: (i) the maximum additional annual assessment for Lots or Dwelling Units in any phase or section of the Development that contains Limited Common Area or Sub-Community Property shall be set forth in a Supplemental Declaration, an Additional Declaration; (ii) the actual additional annual and special assessments may vary from phase to phase or from section to section of the Development; (iii) where a vote of Members is required with respect to Limited Common Property or Sub-Community Property, only those Owners who own Lots or Dwelling Units in the phase or section of the Development to which such Limited Common Property or Sub-Community Property relates shall be entitled to vote on such matters; and (iv) the additional annual and special assessments for Lots or Dwelling Units in any particular phase or section of

the Development shall be used exclusively in connection with the Limited Common Area or Sub-Community Property associated with that phase or section of the Development.

Section 17. Loan to Association. 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 an interest free 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 annually 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 of this Section 17. The Association shall use proceeds advanced to the Association to pay the above described shortfall in Common Expenses. The Association shall repay the loan to Declarant in monthly installments beginning on the first day of the first month following the month in which sales of Lots reach the Break-even Number, until the balance of the Assessment Loan has been repaid to Declarant; provided, however, such Assessment Loan shall in no event be repaid to Declarant later than December 31, 2010. Each buyer of a Lot subject to the Assessment Loan, 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 or Dwelling Unit), 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.

ARTICLE VI

GENERAL POWERS AND DUTIES OF THE ASSOCIATION

Section 1. Powers and Duties of the Board. The Association, acting through its Board, for the mutual benefit of the Owners of the Association, shall have the following powers and duties:

(a) The Association shall be responsible for the improvement, repair, replacement, use, operation and Maintenance of the Common Area and the Landscaped Rights-of-Way as provided in this Declaration, including, but not limited to, removal of litter, planting, mowing, pruning, fertilizing, preservation and replacement of the vegetation and landscaping in, and the upkeep and maintenance of sidewalks, sprinklers, sprinkler pumps, wells, signs, lighting, planting boxes and other equipment, apparatus and improvements located in, the Common Area, the Landscaped Rights-of-Way or located in easements granted to or reserved by the Declarant or the Association. With respect to the Landscaped Rights-of-Way, the foregoing responsibility is to such extent as required by the City of Raleigh and beyond such requirements as the Board may determine in its sole discretion and as approved by the City of Raleigh, with consideration

given to the extent to which any governmental entity may be responsible for or may be carrying out maintenance of same.

(b) The Association is empowered to enter into agreements with the appropriate governmental authorities to enable the Association to improve, repair, replace, use, operate and maintain the Common Area, the Landscaped Rights-of-Way or any portions thereof;

(c) The Association is empowered to make reasonable rules and regulations for the use and operation of the Common Area, and to amend them from time to time; provided that any rule or regulation may be amended or repealed by an instrument in writing signed by the Members possessing seventy-five percent (75%) or more of the total eligible votes of the membership of the Association; provided further, prior to that date which is twenty (20) years after the recording of this Declaration, any such amendment must also be approved by Declarant before it may become effective;

(d) The Association is empowered to enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Area, the Landscaped Rights-of-Way and the Association;

(e) To grant all necessary easements and rights-of-way over and across the Common Areas when in its sole discretion it deems such an action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and drainage facilities and any easement to the Club Owner where consistent with the general use and operation of the Development; provided, however, until that date which is twenty (20) years after the date of recordation of this Declaration, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

(f) The Association is empowered to contract with the Club Owner to provide for the sharing of the costs of maintaining certain landscaping and entrance easement areas which will be shown on plats of the Development or the irrigation systems which benefit the Development (which may also be connected to the Golf Course), and to otherwise provide for payment of the costs of providing water to the Common Areas;

(g) The Association shall Maintain the Landscaped Rights-of-Way, including any medians or islands, which shall be a Common Expense of the Association. Such area(s) shall remain neat, clean, attractive and safe. Damaged, unsafe, or dead plants must be removed by the Association. Neither the City of Raleigh or State of North Carolina will be liable for any accidents or damage caused by such encroachment within the right(s) of way and the Association shall hold harmless the public and indemnify the City of Raleigh and the State of North Carolina from such liability;

(h) The Association is empowered to enter into contracts to maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(i) The Association is empowered to sue or defend in any court of law on behalf of the Association, and to employ attorneys and other necessary professionals in connection therewith;

(j) The Association shall, to the extent determined by the Board, provide adequate reserves for repairs and replacements of Common Area, Landscaped Rights-of-Way, landscape and easement areas shown on recorded plats of the Development;

(k) The Association shall make available to each Member making written request therefor an annual financial report and, upon the written request of the Members possessing seventy-five percent (75%) or more of the total eligible votes of all the Members of the Association, to have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member making written request therefor;

(l) The Association shall make available for inspection by Owners and holders of first lien mortgages or deeds of trust secured by Lots or Dwelling Units, upon reasonable request and during normal business hours, current copies of this Declaration and all Supplemental Declarations, the Bylaws, the rules, regulations, and architectural standards of the Association, and the books, records and financial statements of the Association;

(m) The Association is empowered to adjust the amount, collect, and use any insurance proceeds to repair damage to or replace Common Property; and if proceeds are insufficient to repair damage to or replace Common Property, to levy special assessments (in the manner provided herein) to cover the deficiency;

(n) The Association is empowered to exercise all powers, duties and authority vested in or delegated to the Association by this Declaration, the Bylaws, or the Articles and not reserved to the Members or Declarant by other provisions of this Declaration, the Bylaws or the Articles;

(o) The Association is empowered to employ a manager or firm to manage the business and property of the Association, and to employ independent contractors or other employees as the Board may deem necessary;

(p) The Association is empowered to retain the services of legal and accounting firms;

(q) The Association is empowered to administer and enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or, in its discretion, seek damages or other relief from any Owner for violation of such provisions or rules;

(r) The Association is empowered to contract with any third party or any Owner (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be at competitive rates and otherwise upon such terms and conditions, and for

such consideration as the Board may deem proper, advisable and in the best interest of the Association. Whenever possible, all such contracts shall be made terminable without cause upon sixty (60) days prior written notice;

(s) The Association shall establish the amount of and provide for the collection of annual, special, emergency and individual assessments as provided for in this Declaration; and shall provide for the collection of Social Membership Assessments, the amount of which shall be established by the Club Owner;

(t) The Association is empowered to establish from time to time the tax status of the Association for federal and State of North Carolina income tax purposes, as determined by the Board to be in the best interests of the Association.

(u) The Association is empowered to contract with other nonprofit corporations or associations which exist for purposes substantially similar to those for which the Association exists with respect to the acquisition of lease or use of, and improvement, repair or maintenance of property owned by such corporation or association.

(v) The Association is empowered to enter into agreements or contracts with builders regarding the construction of Improvements on Lots or Dwelling Units located within the Development, or if necessary, to require that all Owners building Improvements on Lots or Dwelling Units use only certain builders (additions to existing Improvements will be specifically excluded);

(w) The Association is empowered to take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder, for the operational protection of the Association and for the implementation and enforcement of the terms, covenants, conditions and restrictions contained in this Declaration or in any Supplemental Declaration.

Section 2. Liability Limitations. Neither Declarant, nor any Member, the Board, any director on the Board, nor any officer of Declarant or the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant or the Association, nor any of the directors, officers, agents or employees of either shall be liable for any incidental or consequential damages for failure to inspect any property, premises, Improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other Person liable to make 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 and all members of the Architectural Control Committee and other committees appointed by the Board from and against any and all loss, cost, expense, damage, liability, action or cause of action arising from or relating to the performance by the Board and such Architectural Control Committee and other committees of their duties and obligations except for any such loss, cost, expense, damage, liability, action or cause of action resulting from

the gross negligence or willful misconduct of the Owner or person(s) to be indemnified; provided, however, that such Owner shall not be indemnified as to any liability arising from his/her status as an Owner, but only as to liabilities arising out of serving on the Board and or Architectural Control Committee.

Section 3. Claims Filed by the Association. 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, unless expiration of any applicable statute of limitations is imminent, the Board shall obtain approval to file such claim from Owners of not less than seventy-five percent (75%) of the total votes in the Association. 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. Notwithstanding anything to the contrary contained herein, there is no such limitation concerning legal action against any Member for violation of any rule, regulation or covenant affecting the Association (including but not limited to legal action for failure to pay assessments or failure to abide by architectural control provisions).

ARTICLE VII

INSURANCE: REPAIR AND RESTORATION

Section 1. Right to Purchase Insurance. The Association shall purchase, carry and maintain in force insurance covering any part or all of the Common Area, Landscaped Rights-of-Way and any improvements thereon or appurtenant thereto and any other property of the Association, for the interest of the Association, the Board, its agents and employees, Declarant and its officers and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as the Board shall consider to be good, sound insurance coverage for similar properties. Such insurance may include, but need not be limited to:

(a) comprehensive public liability and property damage (hazard) insurance on a broad form basis with respect to the Common Area and/or Landscaped Rights-of-Way with coverage of at least One Million and No/100 Dollars (\$1,000,000.00) for public liability and in an amount of at least eighty percent (80%) of replacement cost coverage for hazard insurance;

(b) coverage for the personal liability (if any) of the Declarant (and its officers, agents, employees and servants), the Board (and the individual members thereof), the officers of the Association, the Architectural Control Committee and other committees appointed by the Board, the Owners and Members;

(c) Fidelity bond for all officers and employees of the Association and other Persons having control over the receipt of disbursement of Association funds; and

(d) Worker's compensation insurance to the extent necessary to comply with applicable laws.

Section 2. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance recovered 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 Landscaped Rights-of-Way.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment in the manner provided for in this Declaration, to cover the deficiency.

ARTICLE VIII

USE OF LOTS AND COMMON AREA - PROTECTIVE COVENANTS

Section 1. Land Use And Building Type. Each Lot shall be used exclusively for single-family, non-transient residential purposes. Except as otherwise allowed by the terms of this Declaration, no building or other structure shall be constructed, placed or allowed to remain on a Lot except one single-family attached or detached private dwelling, and/or a detached pump house serving a swimming pool on a Lot, with all of the foregoing meeting the requirements contained in this Declaration, including approval by the Architectural Control Committee. Except as otherwise provided herein, no business activity or trade of any kind (other than activities related to development of the Development by Declarant, installation and maintenance work by utility providers and Persons responsible for street maintenance, construction, alteration, repair, improvement, maintenance or replacement of a single-family residence, or improvement or maintenance of a Lot or Dwelling Unit) shall be conducted on any Lot or within any Dwelling Unit, except that an Owner residing in a Dwelling Unit on a Lot may conduct business activities within the Dwelling Unit as long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door to door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The term "business" and "trade" as used in this Section, shall be construed to have the ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part time; such activity is intended or does generate a profit; or a license is required therefor. Provided, however, and notwithstanding anything to the contrary

that may appear herein: (i) Declarant, Declarant's agent, or any builder of Dwelling Units or homes on any Lot, subject to Declarant's approval, shall be permitted to erect and maintain sales offices, model homes and temporary construction or sales trailers or offices on any Lot or other tract of land owned by Declarant or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots and the construction of single-family residences or Dwelling Units within the Property. Provided, however, any such sales office, model home and temporary construction or sales trailer or office must be specifically approved by Declarant and must comply with all applicable governmental laws and regulations; and (ii) Declarant and any Person authorized by Declarant may conduct such business activities on any Lot or other tract of land within the Development as may be necessary in connection with Declarant's development and/or sales of any part or all of the Property.

Section 2. Obstructions, etc. There shall be no obstruction of the Common Area, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Area, or removed therefrom, without the prior consent of the Association. Provided, however, Declarant and the Association shall have the right to install, place, repair, replace and maintain signs in the Common Area and to install, maintain, repair and replace in the Common Area such materials, equipment and other apparatus as may be necessary to enable the Association to carry out its powers and duties under this Declaration.

Section 3. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on such Owner's Lot or Dwelling Unit or in the Common Area which will result in the cancellation of or increase in cost of any insurance carried by the Association, or which would be in violation of any law or any rule or regulation established by the Association. No waste shall be committed in the Common Area, except as may be necessary to enable Declarant or the Association to exercise any rights reserved to them hereunder or except as may be necessary to enable the Association to carry out its powers and duties hereunder. Each Owner shall comply with all applicable laws, regulations, ordinances (including, without limitation, zoning ordinances) and other governmental rules and restrictions in regard to such Owner's Lot(s) or Dwelling Unit(s) and the Common Area, and shall do so notwithstanding any attempted waiver or approval given by the Declarant or Architectural Control Committee under the terms of this Declaration.

Section 4. Nuisance and Other Matters. No noxious or offensive activity shall be conducted upon any Lot or Dwelling Unit nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No trade materials or inventories (other than materials used for construction of dwellings or other approved structures on the Lots or Dwelling Units) may be stored upon any Lot or Dwelling Unit and no tractors, inoperable motor vehicles, rubbish, trash, or unsightly materials of any kind may be stored, regularly placed, or allowed to remain on any Lot or Dwelling Unit (except that trash, leaves, tree limbs, materials for recycling pick-up and similar items may be kept or placed on a Lot or Dwelling Unit temporarily and only for such time as is reasonably necessary to enable the appropriate Governmental or private entity to remove same from the Lot or Dwelling Unit, or such materials may be kept on a Lot or Dwelling Unit for use as a compost (provided that such materials used for this purpose are neatly kept and are screened from view from any adjoining Lot, Dwelling Unit or street as approved by the Architectural Control Committee) and inoperable motor

vehicles may be stored on a Lot or Dwelling Unit if the same are kept in an enclosed garage). Provided, however, trucks and/or other construction vehicles, materials and equipment may be allowed to remain on the Property temporarily during construction of roads, utilities and other improvements within the Property and during construction on a Lot of a single-family residential dwelling or a Dwelling Unit and/or other Improvements which have been approved for construction by Declarant or the Architectural Control Committee established by this Declaration (the temporary nature of the foregoing to be determined by the Declarant or by the Association or the Architectural control Committee, when such right has been assigned by the Declarant to the Association or the Architectural Control Committee). Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable environmental laws of any governmental entity having jurisdiction over the Property may be kept or allowed to remain in or on the Property at any time, except as may be required to effectuate removal of such prohibited materials and substances, unless the presence of such vehicle must be allowed on a public street under any applicable governmental regulations.

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, Sub-Association 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 5. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any portion of the Property or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes, that they do not create a nuisance (in the judgment of the Board), such as, but without limitation, by number, noise, odor, damage or destruction of property or refuse, and further provided that they are kept and maintained in compliance with (i) all laws and ordinances of the State of North Carolina, the County of Wake or other applicable governmental entity relating thereto; and (ii) such rules and regulations pertaining thereto as the Board may adopt from time to time. In no event shall more than three dogs and/or three cats be regularly kept on any Lot or in any Dwelling Unit, except for newborn offspring of household pets which are under nine (9) months in age. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal of, any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard. Every person owning or having possession, charge, care, custody or control of any dog shall keep such dog exclusively upon his own Lot; provided, however, that such dog may be off the Lot if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 6. Signs. No sign of any kind shall be displayed to the public view on any Lot or Dwelling Unit except for signs which are approved by Declarant (or by the Board upon

termination of the Class B Membership) and which are for one or more of the following purposes: (i) advertising the Lot or Dwelling Unit for sale or rent; (ii) advertising the building contractor constructing improvements on the Lot or Dwelling Unit during the initial construction and sales period; (iii) identifying the sales office and/or model home of a building contractor who owns the Lot or Dwelling Unit; (iv) identifying the subdivision or phase name and/or identifying the Lot number of a Lot or Unit number of a Dwelling Unit; and (v) any other purpose approved by the Declarant (or by the Board after the Class B membership terminates); provided however, the foregoing limitations shall not act to restrict or prohibit Declarant or the Association or any applicable governmental entity from erecting, maintaining, repairing and replacing (and Declarant hereby reserves for itself, the Association and such governmental entities the right to erect, maintain, repair and replace) on a Lot, Dwelling Unit or on the Common Area, Landscaped Rights-of-Way, and in any easements reserved or granted for such purposes, signs and billboards advertising the Property, the Development or portions of either, or signs identifying various phases of the Development, or regulatory, street and directional signs. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform with all applicable governmental requirements.

Section 7. Attachments. No permanent attachments of any kind or character whatsoever shall be made to the roof or exterior walls of any Dwelling Unit or residence on a Lot, unless such attachments shall have been first submitted to and approved by the Architectural Control Committee; provided, however, "Reception Devices" (as defined in Article VIII, Section 17 herein) may be attached to the roof or exterior wall of a Dwelling Unit without approval by the Architectural Control Committee. No outdoor clotheslines shall be allowed on any Dwelling Unit or Lot.

Section 8. Damage to the Common Area. Each Owner shall be liable to the Association for any damage to the Common Area, and/or Landscaped Rights-of-Way caused by the negligence or willful misconduct of the Owner or such Owner's family members, tenants, guests, or invitees.

Section 9. Rules of the Association. All Owners and occupants of Lots or Dwelling Units shall abide by all rules and regulations adopted by the Association from time to time. The Board and the Declarant for so long as there remains a Class B Membership 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 the Declarant for all damages and costs, including attorney's fees.

Section 10. Boats and other Recreational Vehicles. Neither a motorboat, houseboat or other similar waterborne vehicle, nor any airplane, nor any travel trailers, other trailers, or "camper" vehicles may be maintained, stored or kept on any portion of the Property, except in (1) enclosed garages or (2) in area(s) specifically approved and with screens or covers as specifically approved by the Declarant or Architectural Control Committee (in the absence of approval or disapproval by Declarant).

Section 11. Outbuildings. No storage building or other outbuildings of any kind (excluding detached garages as are approved by the Architectural Control Committee) shall be erected, placed or allowed to remain on any Lot except those which are incidental to a swimming pool located on a Lot, are constructed of the same or substantially identical materials as the residential dwelling on the Lot, are architecturally compatible with the residential dwelling on the Lot (as determined by the Architectural Control Committee), are located no closer to the front boundary line of the Lot than the rear wall of the single-family residence located on the Lot and no closer to any side boundary line of a Lot than the applicable building setback requirements, and which have otherwise been approved by the Architectural Control Committee.

Section 12. On-Street Parking. The Owner of each Lot which is a detached single family Lot shall provide for adequate parking space on the Lot for vehicles of all types and all other apparatus designed for movement over and upon streets or highways (whether self-propelled or not) and regularly used by the residents of the single-family residence on the Lot. No automobiles, trucks, vans, travel trailers, other trailers or any other apparatus designed for movement over and upon streets or highways (whether self-propelled or not) shall be regularly parked on the streets within or adjoining the Property, and motor vehicles licensed to carry more than two (2) tons shall not be permitted to park overnight or regularly on the streets, driveways or otherwise within the Property, except that Declarant until termination of its Class B Membership and the Board thereafter may allow such parking, by any such vehicles used in connection with the construction of improvements within the Property. In addition and supplemental to the prohibitions on parking set forth in this Declaration the Board (and the Architectural Control Committee) are empowered to promulgate and enforce rules and regulations relating to parking on the streets within or adjoining the Property. Notwithstanding the foregoing, it is hereby disclosed and acknowledged that the City of Raleigh or other governmental authorities have certain jurisdiction over public streets in the Subdivision, and that the prohibitions and restrictions set forth in this Section may not be capable of being enforced due to the policies of the City of Raleigh or other governmental authority, and may not be capable of being enforced against parties who are not members of the Association or their tenants.

Section 13. No Temporary Structure. No structure of a temporary character, such as a trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Landscaping. Except for the single-family residence, driveways, sidewalks and other Improvements on each Lot or Dwelling Unit, the surface of each Lot shall be of undisturbed areas left in their natural state or grass or other live foliage or areas covered with pine straw and/or other ground cover approved by the Architectural Control Committee, and such natural areas, grass foliage, pine straw and ground cover shall be neatly maintained at all times. No trees may be removed from any Lot without the written approval of the Architectural Control Committee except those trees which are dead, dying, diseased or damaged, or trees that pose a safety hazard.

Section 15. Fences and Walls. Except as specifically approved in writing by the Architectural Control Committee, no fence, wall or hedge shall be erected, placed or altered on

any Lot nearer to any street fronting such Lot than the front building corner of the main dwelling constructed on such Lot and shall not exceed six (6) feet in height unless otherwise specifically required by governmental authorities having jurisdiction. All fences on Lots shall be maintained at all times in a structurally sound and attractive manner and in a good state of repair. All fences on Lots shall be of wood, metal (excluding chain link), masonry or material approved by the Declarant (or the Board, when the right to appoint the Architectural Control Committee has been assigned to the Board) and no fence shall be constructed, placed or allowed to remain on any Lot until the Owner thereof has obtained approval for such fence from the Architectural Control Committee.

Section 16. Sight Line Limitations. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty (20) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within the foregoing distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines. Declarant reserves the right to waive the foregoing requirements with respect to portions of any Lots that also are considered Common Area or contain Common Property.

Section 17. Antennae. No exterior antennae, earth satellite station, microwave dish or other similar improvements may be constructed, placed, maintained or allowed to remain on any Lot or Dwelling Unit (or on any Improvement) other than a "Reception Device." As used herein, a Reception Device shall refer to a satellite dish or other device designed to receive video programming or antenna designed to receive over-the-air broadcast signals from local television stations. The use of a Reception Device is allowed, but will be limited as follows: (i) a Reception Device thirty-nine (39) inches or small in diameter is allowed, and Reception Devices larger than one meter are prohibited; (ii) Reception Devices must be installed on the Dwelling Unit in an inconspicuous location (so long as the quality of reception is not impaired); (iii) for safety purposes, no Reception Device may be installed that would extend higher than twelve (12) feet above the roofline of the Dwelling Unit without approval from the Architectural Control Committee; (iv) for safety purposes, Reception Devices shall not be installed closer to an adjacent Dwelling Unit than the total height of the Reception Device; (v) the Owner of the Dwelling Unit upon which the Reception Device is located shall be solely responsible for the maintenance, repair, upkeep and all other costs associated with the Reception Device, including any medical expenses incurred by any person injured by the use of such Reception Device; and (vi) the Reception Device should be painted an appropriate color to match the surrounding environment if it would not unreasonably increase the cost of the Reception Device or impair the Owner's ability to install, maintain or use the Reception Device. If any provision of this Section 17 is found to be invalid, the remainder of these provisions shall remain in full force and effect.

Section 18. Gas Meters. No gas meters shall be set in the front of a residence on a Lot or Dwelling Unit unless such meter is of an underground type or is screened in a manner approved by the Architectural Control Committee.

Section 19. Utility Yards. Each utility yard shall be walled or fenced or otherwise screened from view by landscaping features or other methods as approved by the Architectural Control Committee. The following buildings, structures and objects may be constructed or placed on a Lot and allowed to remain on a Lot only if the same are located wholly inside the single-family residence or garage on the Lot or wholly within a utility yard located on the Lot: pens, yards and houses for pets; above ground garbage and trash cans or receptacles (unless by applicable governmental law or regulation the same must be located elsewhere); and all other buildings, structures and objects determined by the Architectural Control Committee to be of a similar nature to the foregoing items or determined by the Architectural Control Committee to be of an unsightly nature or appearance.

Section 20. Mailboxes. All mailboxes, unless attached to the residence on a Lot (which attachment either must be approved by the Architectural Control Committee or otherwise required by applicable governmental law or regulation or United States Postal Service or successor agency shall be affixed to a substantial pole or stand permanently placed in the ground and shall not be located within a sidewalk. Architectural guidelines with respect to mailboxes may require, prohibit, restrict or specify one or more of the following: method and type of support; style; material; color; size; height; and one or more of the foregoing with respect to the numbering and/or lettering to be placed on a mailbox or affixed thereto.

Section 21. Utilities. Except as otherwise specifically approved by the Architectural Control Committee, all electric, telephone, water and sewer, natural gas and cable television utilities and utility connections serving individual Lots or Dwelling Units shall be located underground or screened in such manner as is approved by the Architectural Control Committee. Transformers, electric, gas or other meters of any type, or other utility apparatus shall be contained within the buildings constructed on Lots or buildings containing Dwelling Units or, if adequately screened in a manner approved by the Architectural Control Committee, the same may be located on the exterior of buildings.

No septic tank shall be installed, used or maintained on any Lot or Dwelling Unit. No well or individual water supply system shall be installed, used or maintained on any Lot or Dwelling Unit for human domestic water consumption nor shall any well be connected in any manner whatsoever to the water mains, laterals or piping serving the residence which furnish domestic water from sources beyond the boundary lines of the Lot or boundaries of a Dwelling Unit. Notwithstanding the foregoing prohibition, the Architectural Control Committee may permit in writing the installation, use and maintenance of wells and pumps for irrigation purposes or ground water heat pump systems.

Section 22. Minimum Square Footage. The minimum square footage for any main residence constructed on any Lot shall be as approved by the Architectural Control Committee in accordance with the Architectural and Landscape Guidelines.

Section 23. Building Setback Distances. The main residence on each Lot shall not be located on any Lot nearer to the Lot boundary lines than the building setback lines established on

the recorded plat for such Lot. Nothing herein shall prohibit a townhouse residence from being located on the boundary lines of a Lot.

Declarant for so long as there is a Class B Membership, and thereafter the Architectural Control Committee reserves the right at any time and from time to time to grant minor variances from and/or waive minor violations of the foregoing setback requirements (and, subject to approval of the City of Raleigh or other applicable governmental entity having jurisdiction, to waive violations or grant variances from any setback requirements shown on any recorded plat of Lots in the Development), such variances or waivers to be in writing. Variances or waivers not in excess of twenty percent (20%) of the applicable requirement are deemed to be minor. Notwithstanding the foregoing, if any minimum setback distance specified herein is different from any minimum setback distance shown on any recorded plat of any part or all of the Property, the greater distance shall be controlling with respect to the Lot or Lots affected thereby. Notwithstanding the foregoing, no waiver or variance may vary or waive the setback requirements of the City of Raleigh or other applicable governmental entity.

For the purpose of determining the foregoing building setback distances under this Declaration, eaves, steps, stoops, open and screened-in porches, overhangs, bay windows, decks, patios, terraces and chimneys not be considered as a part of the main dwelling house, but the location of such Improvements on a Lot shall be subject to the architectural control and approval provisions applicable to the Lots subject to this Declaration. Provided, notwithstanding anything to the contrary that may appear herein, no dwelling or other improvement on a Lot shall encroach upon another Lot except as provided in Additional Declarations for Sections of the Development containing townhouse Dwelling Units. Should any question arise under this Declaration as to whether or not any portion of the main dwelling house (other than the foregoing items specified as not being part of the main dwelling house) should be considered as part of the main dwelling house for the purpose of determining the foregoing building setback distances, or should any question arise as to what constitutes the front, side or rear property line of any Lot for the purposes of the required setback distances set forth in this Declaration, the Architectural Control Committee shall have the authority to make such determination and the decision of the Architectural Control Committee shall be final.

With respect to Declarant's rights to grant variances or waivers of square footage and building setback requirements, these rights are reserved to provide a method to grant relief from inadvertent violations and to afford an opportunity to address special, unusual or unique circumstances that may apply to any particular Lot (such as, for example, difficult topographical circumstances or unusual soil conditions). However, it is the specific intention of the Declarant that the exercise of such rights by Declarant not impair or destroy the rights of the Declarant, the Association or the Owners to enforce the provisions of this Declaration (subject to any such variance or waiver granted by Declarant), and that the exercise of such rights by Declarant not convert this Declaration from a real covenant running with the Property and binding on all present and future Owners of any part or all of the Property into a mere personal covenant enforceable only the Declarant.

Furthermore, with respect to Additional Property subjected to this Declaration, Declarant reserves the right to establish different minimum square footage and building setback

requirements as Declarant determines in its sole discretion may be necessary to accommodate different sizes of lots, different types and sizes of single-family residences, and different marketing conditions from what exists or has existed in other phases or sections of the Development.

Section 24. Exterior Materials. The exterior materials of each building constructed, altered or placed on a Lot and all roofs shall be as approved by the Architectural Control Committee in accordance with the Architectural and Landscape Guidelines.

Section 25. Recreational and Other Equipment.

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

(b) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition to adjoining Owners or to persons using the Golf Course.

(c) No such recreational equipment shall be located (i) upon any Lot, Dwelling Unit or other portion of the Property which is contiguous to the Golf Course; or (ii) on any portion of the Property within a distance of one hundred (100) feet from any boundary of the Golf Course.

(d) Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain repeatedly overnight within any front yard of any Lot or Dwelling Unit, within the side yards of any Lot or Dwelling Unit located on a Roadway corner, or upon any Lot, Dwelling Unit or other portion of the Property (i) which is contiguous to the Golf Course or (ii) which is within a distance of one hundred (100) feet from any boundary of the Golf Course, in such number or for such a long period of time as to create a continuing, unsightly condition.

Section 26. Vegetable Gardens. Vegetable gardens shall not be permitted on any Lot unless placed in the rear portion of such Lot in such a manner as not to constitute a nuisance or unsightly condition to any adjoining Owners or to persons using the Golf Course. In no event shall any vegetable garden be located upon (i) any Lot, Dwelling Unit or other portion of the Property which is contiguous to the Golf Course or (ii) any portion of the Property within a distance of one hundred (100) feet from any boundary of the Golf Course.

Section 27. Lawn Furniture and Statues. No lawn furniture or decorative items, such as statuettes or renderings of animate or inanimate objects, shall be maintained in the front or side yards of any Lot or Dwelling Unit unless shielded from view by landscaping, a fence or a wall approved in advance in writing by the Architectural Control Committee.

Section 28. Restricted Activities Regarding Lakes and Ponds. The Property will contain one or more lakes or ponds which may or may not be Common Area. With respect to construction of a Dwelling Unit or any Improvements on any Lot that abuts a lake or pond, a silt

fence or barrier shall be placed across each such Dwelling Unit or Lot during the construction of any Improvements thereon in such manner as to protect the lake or pond from soil erosion and silt. Such fence or barrier shall be constructed prior to the commencement of any construction of Improvements, including clearing or grading, and shall remain in place until such time as the said Dwelling Unit or Lot has been landscaped or stabilized in a manner that will protect the lake or pond from soil erosion and silt. No pesticides or other toxic, hazardous or harmful chemicals shall be used for any purposes whatsoever within thirty (30) feet of any lake or pond. Any such chemicals used or applied more than thirty (30) feet from any lake or pond shall be used or applied so as to prevent the spread or dissemination of such chemicals into the lake or pond. No piers, jetties, docks, boat houses, storage facilities or other similar structures shall be constructed or located on or in any portion of the lake or pond. No boats or other floating vessels shall be permitted in or on any portion of the lake or pond. No Person shall be allowed to swim, fish or engage in any other recreational activities within any lake or pond.

Section 29. Golf Course Lots. No Lots or Dwelling Units along the Golf Course shall have fenced yards except for invisible or other limited fencing approved by the Architectural Control Committee. In addition, no decks, storage sheds, tree houses, basketball goals, skateboard ramps or other Improvements visible from the Golf Course shall be installed or constructed on any Lot or Dwelling Unit unless prior written approval is obtained from the Architectural Control Committee.

Section 30. Occupants Bound. All provisions of this Declaration, any Additional Declaration, the Master Declaration, the Bylaws and any and all rules and regulations, use restrictions or Architectural and Landscape 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. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot or Dwelling Unit and all applicable City of Raleigh or other governmental entity requirements or restrictions relative to the location or construction of Improvements on a Lot and/or use and utilization of any Lot or Dwelling Unit shall continue to be applicable and shall be complied with in regard to the Lots or Dwelling Units. Provided, that in any instance in which the provisions of this Declaration impose a more restrictive requirement than the applicable governmental requirements or restrictions, the provisions of this Declaration shall control.

Section 32. Thoroughfare Yards. Parcels within the Property contain areas designated as Thoroughfare Yards. Uses of Thoroughfare Yards are currently regulated by the City of Raleigh so that among other things, grading, the construction of buildings, vehicle surface areas, and loading areas are prohibited in the Thoroughfare Yards, and the Thoroughfare Yards are to be planted and maintained as regulated by the City of Raleigh. Destruction, injury or removal of existing or City of Raleigh required landscaping within the Thoroughfare Yards is a violation of the existing City Code, punishable by significant fines and imprisonment; any destruction, injury or removal of such landscaping is also a violation of this Declaration (for so long as regulated by the City of Raleigh). As an additional covenant, condition and assessment described in the Declaration, each Owner of any additional parcel in the Thoroughfare Yard property shall pay an

additional Twenty and No/100 Dollars (\$20.00) each year to the Association, which the Association shall use to maintain the Thoroughfare Yards in accordance with City of Raleigh regulations and requirements. An easement within all Thoroughfare Yards is hereby granted to the Association to enter the Thoroughfare Yard for the purpose of planting, pruning, watering, spraying and maintaining the plantings within the Thoroughfare Yard.

Section 33. Greenways. Notwithstanding any other provisions of this Declaration, the Association, Owners, Members, tenants, members' guests or invitees, or families of members shall not, within any portion of the Common Area which is greenway area dedicated to the City of Raleigh as Greenway, without the prior written consent of the City of Raleigh: (a) grant easements of any nature whatsoever; (b) remove any trees or vegetation (c) erect gates, fences or other structures; (d) place any garbage receptacles; (e) fill or excavate; (f) plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Raleigh may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association and Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City and may enter into such agreements with the City of Raleigh as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

Section 34. Lumley Road. No Improvement may be placed or constructed within twenty (20) feet on either side of the right-of-way of Lumley Road ("Protected Area") without prior written approval of the Architectural Control Committee. In addition, the following are prohibited within the Protected Area: recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, treehouses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) and vegetable gardens. In addition, no children's play toys or other moveable equipment of any type (such as lawn mowers, garden tools, etc.) may remain repeatedly overnight within such Protected Area.

ARTICLE IX

ARCHITECTURAL CONTROL

Section 1. General. Anything contained in this Declaration to the contrary notwithstanding, no construction of any Dwelling Unit, no site preparation on any Lot, no change in grade or slope of any Lot, no construction or placement of any building or exterior additions or alterations to any building situated upon a Lot, no removal of trees (except dead, dying, diseased or damaged trees, or trees that pose a safety hazard), and no construction of or

changes or additions to any other structure or Improvement on a Lot or Dwelling Unit shall be commenced nor shall any of the same be placed, maintained or allowed to remain, on any Lot or Dwelling Unit until the "Architectural Control Committee" (appointed as hereinafter provided) has approved the plans and specifications therefor and the location of such Improvements. The Architectural Control Committee shall have the right to charge a reasonable fee for the review of any such plans and specifications. Provided, however, that all improvements constructed by or on behalf of the Club Owner on the Club Property shall not be subject to review by the Architectural Control Committee, as the Club Property is not subject to this Declaration.

Section 2. Composition. Through that date which is twenty (20) years after the date of recording of this Declaration, Declarant shall annually appoint the members of the Architectural Control Committee which will be composed of at least three (3) individuals (the exact number of members of the Architectural Control Committee to be designated by Declarant from time to time), each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Development. The initial members appointed by Declarant shall serve for the remainder of the one (1) calendar year in which they are appointed. Thereafter, the members so appointed are appointed to serve for the next succeeding calendar year. In the event of the death or resignation of any member of the Architectural Control Committee, Declarant, for so long as it has the authority to appoint the members of the Architectural Control Committee and thereafter, the Board, shall have full authority to designate and appoint a successor. Subsequent to December 31, 2020 (and earlier if Declarant specifically assigns this right to the Board), the Board shall designate the number of and appoint the members of the Architectural Control Committee. At any time and from time to time Declarant may assign to the Board its right to appoint members of the Architectural Control Committee.

The Declarant (and the Board when applicable), in its discretion, may at any time and from time to time appoint two separate Architectural Control Committees; one for the purpose of reviewing plans, specifications and site plans for initial Improvements to be constructed or placed on a Lot, and another to review plans, specifications and site plans for subsequent new Improvements and changes in and additions to existing Improvements on a Lot or Dwelling Unit, the specific division of such reviews to be as specified by the Declarant (or the Board when applicable). Each such Architectural Control Committee separately shall be subject to and shall comply with the provisions of this Declaration applicable to the Architectural Control Committee and the review of plans, specifications and site plans.

Section 3. Procedure. No exterior Improvement of any kind or nature shall be constructed, repaired, replaced, remodeled, placed or allowed to remain on any Lot or Dwelling Unit until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee, as to:

(a) type of materials, adequacy of site dimensions and facing of main elevation with respect to nearby streets;

(b) conformity and harmony of the external design, color, type and appearance of exterior surfaces and compatibility with existing Improvements within the Property;

(c) location of the Improvement on a Lot or Dwelling Unit and effect of location and use on neighboring Lots and Dwelling Units and Improvements situated thereon;

(d) provisions for handling stormwater drainage;

(e) compliance with the provisions of this Declaration and compliance with any architectural guidelines that may be established from time to time by Declarant (or by the Board when the Board has the right to appoint the members of the Architectural Control Committee, or by the Architectural Control Committee, if such power is delegated to it by Declarant or the Board otherwise possessing such power).

Final plans and specifications for all Improvements proposed to be constructed on a Lot or Dwelling Unit shall be submitted to the Architectural Control Committee for approval or disapproval in such format and in such numbers or sets (not to exceed three) as the Architectural Control Committee may require. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Architectural Control Committee, at least one complete set of plans and specifications shall be retained by the Architectural Control Committee and another complete set of plans and specifications shall be marked "Approved" and returned to the lot Owner or such Owner's designated representative. If such plans and specifications are determined not to be in compliance with this Declaration, or if the same are otherwise unacceptable to the Architectural Control Committee because of inadequacy or noncompliance with respect to the provisions of this Section, one set of plans and specifications shall be returned to the lot Owner marked "Disapproved", accompanied by a reasonable statement of items found not to be in compliance with this Declaration or otherwise unacceptable. Any modification or change in the plans and specifications submitted to and approved by the Architectural Control Committee must again be submitted to the Architectural Control Committee for its inspection and approval in accordance with requirements established by the Architectural Control Committee. The Architectural Control Committee's approval or disapproval, as required herein, shall be in writing.

The Declarant (or the Board, when the Board has the right to appoint members of the Architectural Control Committee, or the Architectural Control Committee, when such power has been delegated to it by the Declarant or the Board possessing such power), may from time to time adopt procedures for conducting the architectural reviews and other duties of the Architectural Control Committee, provided that such procedures do not conflict with the specific requirements of this Declaration.

The Declarant (or the Board, when the Board has the right to appoint members of the Architectural Control Committee, or the Architectural Control Committee, when such power has been delegated to it by the Declarant or the Board possessing such power) at any time and from time to time may establish architectural guidelines (the "Architectural and Landscape Guidelines") for one or more types of Improvements to be constructed on a Lot or Dwelling Unit, which guidelines shall be fair and reasonable, may from time to time be amended or revised, and shall carry forward the spirit and intention of this Declaration. Although the

Architectural Control Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein or in such guidelines, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Subject to the specific terms and conditions of this Declaration, different architectural guidelines may be promulgated and applied to different phases within the Development. Such guidelines shall supplement, but not supersede, the provisions of this Declaration and may be more (but not less) restrictive than the specific provisions of this Declaration. Such guidelines may (but shall not be required to) include, but not be limited to, the following matters: construction specifications; signs; mailboxes; landscaping; and environmental matters. Provided, however, if there is a conflict between any such guideline and the specific provisions of this Declaration, any Supplemental Declaration, any Additional Declaration, or any recorded declaration of covenants, conditions and restrictions applicable to any phase or section in the Development, the provisions of this Declaration, such Supplemental Declaration, such Additional Declaration or such other recorded declaration shall control.

Section 4. Jurisdiction. In addition to the foregoing, the Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on a Lot or Dwelling Unit which may, in the reasonable opinion of the Architectural Control Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property or the Development.

Section 5. Enforcement. The Architectural Control Committee shall have a specific, nonexclusive right, but shall not be obligated, to enforce the provisions contained in this Article IX and/or to prevent any violation of the provisions contained in this Article IX by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions.

Section 6. Failure of the Architectural Control Committee. If the Architectural Control Committee fails to approve or disapprove any plans, specifications and other submittals which conform with the requirements for such submittals established as provided herein or to reject them as being inadequate or unacceptable within forty-five (45) days after submittal thereof to the Architectural Control Committee, and provided such submittal was a full and complete submittal of all items required by this Declaration and any applicable architectural guidelines to have been submitted to the Architectural Control Committee, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals, except that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration, in any applicable Supplemental Declaration or Additional Declaration, or of any applicable governmental entity. 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 the same in part, conditionally or unconditionally, and reject the balance.

Section 7. Limitation of Liability. Neither the Architectural Control Committee nor the members thereof, nor Declarant, nor the Association, shall be liable in damages or otherwise to any Person submitting plans and specifications and other submittals for approval, by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications or other requests for approvals.

Section 8. Miscellaneous. No member of the Architectural Control Committee shall be entitled to compensation for services performed pursuant to this Declaration. Provided, however, the Association may reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses.

ARTICLE X.

EASEMENTS

Section 1. Easements Reserved by Declarant.

(a) Declarant, for so long as there is a Class B Membership, and then the Association, for itself, its successors and assigns, and its agents, contractors, and employees reserves a perpetual, alienable, and releasable easement on, over and under the Property (and including all Dwelling Units, Lots, Common Property and Limited Common Property) for installation, Maintenance, repair, replacement, use, operation and removal of utilities (including, without limitation, electric, natural gas, telephone and cable television) and related appurtenances and equipment (including, without limitation, wires, poles, pipes, transformer boxes and conduits), stormwater and drainage facilities and soil and water impoundments. Provided, however, no easement hereby reserved shall be applicable to any portion of a Lot or Common Area or Limited Common Area used as building site or approved for use as building site by the Architectural Control Committee. Full right of ingress and egress shall be had by Declarant at all times over the Lots and Dwelling Units or Common Areas or Limited Common Areas (other than the portions thereof used or approved as building sites) for the installation, use, operation, Maintenance, repair, replacement or removal of any such utility, drainage facility or impoundment, together with the right to remove any obstruction that may be placed in any easement that would constitute interference with the use of such easement, or with the use, installation, Maintenance, repair, replacement, removal or operation of same. Assignees to whom Declarant reserves the right to assign and convey, in whole or in part, the easements reserved by it hereunder shall include, without limitation, the Association and one or more governmental entities or public utility companies. Provided, however, neither the foregoing reservation of easement rights nor any similar reservation of easement rights contained in this Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to provide or maintain any such utility, drainage facility or impoundment, which if not otherwise maintained, shall be maintained by the Association.

(b) In addition to the foregoing, Declarant and the Association reserve the right to subject the Property to a contract with Carolina Power and Light Company ("CP&L") (or such other electric utility company as may provide electric service to the Property) for the installation

of above ground or underground electric cables and lines and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to CP&L (or such other electric utility company) by each Owner.

(c) Declarant hereby declares and establishes, in accordance with Article IV, Section 2 herein, rights and easements over the Common Area for the benefit of Declarant and its agents, employees, and contractors for activities associated with the development of the Property.

Section 2. Easement Reserved for The Association.

(a) Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot or Dwelling Unit for the maintenance and repair of each Lot or Dwelling Unit in accordance with the provisions hereof and for the carrying out by the Association of its rights, powers, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot or Dwelling Unit shall be made with as minimum inconvenience to the Owner as reasonably practicable, and any damage caused as a result of the negligence of the Association's employees or agents shall be repaired by the Association at the expense of the Association.

(b) In addition to the foregoing, and in order to implement effective and adequate erosion control, the Association, and its contractors, employees and agents, shall have the right to enter upon any portion of any Lot or Dwelling Unit before and after Improvements have been constructed thereon for the purpose of performing any grading or landscaping work or constructing, repairing, replacing, using, and maintaining erosion control devices; provided, however, no such activities shall interfere with any permanent Improvements constructed on any such Lot or Dwelling Unit (which Improvements have been approved by the Architectural Control Committee). If the need for erosion control results from the construction of Improvements on any portion of a Lot or Dwelling Unit or any excavation, grading, removal, reduction, addition or clearing of any Lot or Dwelling Unit or portion thereof, the cost of any such work performed by the Association for the purpose of implementing effective and adequate erosion control shall be assessed against the Owners of the Lot or Dwelling Unit on which such work has been performed. Provided, however, if the Association determines that appropriate corrective action is necessary on a Lot or Dwelling Unit, prior to exercising its right to enter upon such Lot or Dwelling Unit and performing any grading or landscaping work or constructing or maintaining erosion prevention devices, the Association shall give the Owner of such Lot or Dwelling Unit written notice of and the opportunity to take the corrective action specified in such notice. If the Owner fails to complete the specified corrective action by the date specified in the notice, the Association may then exercise its right to enter upon the Lot or Dwelling Unit and take or complete the necessary corrective action.

Section 3. Easement Reserved for Governmental Entities and Public Utilities. An easement is hereby established for applicable governmental entities and municipal, state or public utilities serving the Development, and their agents and employees, over all Lots, Dwelling Units, Common Areas and Sub-Community Property hereby or hereafter established (and approved if required), for the purpose of setting, removing, repairing, maintaining and reading utility meters, maintaining, repairing and replacing streets, utilities, utility or drainage connections, and acting for other purposes consistent with the public safety and welfare,

including, without limitation, police and fire protection, garbage collection, and mail delivery, the rights granted by such easements to be exercised in a reasonable manner and at reasonable times (except in the case of an emergency).

Section 4. Easements Shown On Recorded Maps. Declarant, for itself, its successors and assigns (including, without limitation, governmental entities and the Association), and in addition to those easements reserved in this Declaration, hereby reserves easements in the locations and for the purposes shown and indicated on all maps of Lots or Dwelling Units subject to this Declaration that are recorded in the Wake County, North Carolina Registry, and, for the purpose of exercising and implementing such easement rights, Declarant and the Association shall have the right of ingress, egress and regress over and upon those easement areas. The rights reserved by this Section 4 include, without limitation, the right to construct, alter, place, maintain, repair, replace and use in the easement areas identified on such maps, all Improvements deemed necessary, in the reasonable discretion of the Declarant or the Association, for the full exercise of such easements.

Section 5. Easement Regarding Golf, Tennis, or Other Recreational Use. Declarant, the Club's members, employees, and visitors to the Club and Club Facilities shall have a perpetual, non-exclusive easement in their favor to use the Roadways (other than Roadways that are public streets) and entranceways and other Common Areas as necessary during any use of the Club Facilities, including the Golf Course or tennis courts, or as a spectator, worker or purveyor at or for any tournament or activity 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 encroachment agreements with the City of Raleigh for such purposes subject to the requirements and procedures of the City of Raleigh. In addition, Declarant hereby dedicates and reserves for the benefit of the Club, its members, visitors, agents and employees, nonexclusive perpetual easements over, across and under certain portions of the Property, indicated and shown on the plats of the Development as being reserved as easements for the benefit of the Club or the Golf Course (for example, labeled as "Golf Course Easement" or "Easement for Golf Cart Tunnel"), for the following purposes, including the installation, maintenance, repair and removal thereof:

(i) rights-of-way for pedestrian access, ingress and egress to and from the Golf Course; and

(ii) rights-of-way for golf cart, golfing individuals and maintenance vehicle access, ingress and egress to and from the Golf Course.

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, golf, tennis 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 golf course easements and/or encroachments over public street rights-of-way.

Section 6. Easements for Errant Golf Balls; Limitation of Liability. Every Lot, Dwelling Unit, Common Area and all other portions of the Property are hereby burdened with an easement in favor of any golfer for the purpose of retrieving errant golf balls. The Association shall not be responsible or liable in any way for any disputes between an Owner and any person using the Golf Course. All Owners, by acceptance of delivery of a deed to their respective Lot, Dwelling Unit, tract or other portion of the Property, for themselves, their contractors, subcontractors, guests and invitees, successors in interest and assigns, assume all risks associated with errant golf balls, including personal injury and property damage and all Owners agree and covenant for themselves, their contractors, subcontractors, guests and invitees, successors in interest and assigns, not to make any claim or institute any action whatsoever against Declarant, the Association, the Club, the Club Owner, the architect of the Golf Course, or any officers, directors, employees, agents or affiliates of any of them, or their respective assigns, arising or resulting from any errant golf balls or any damages that may be caused thereby.

Section 7. Construction and Maintenance Easement. Each Owner of a Lot on which a Dwelling Unit is to be constructed closer than five (5) feet from a Lot line, and such Owner, its successors, assigns, contractors, or agents, are hereby granted an access easement over and across any adjoining Lots and Common Areas as necessary for the construction and Maintenance of the Dwelling Unit; provided, however, that such access easement shall not prohibit or interfere with access to the adjacent Owner's Lot or Dwelling Unit, and any damage to the adjacent Owner's Lot or Common Areas as a result of such access shall be promptly repaired by the Owner benefiting from the access easement, at its sole cost and expense. No fence, wall or outbuilding or any other kind of obstruction shall be permitted in the easement area which will obstruct access to the Dwelling Unit.

Section 8. Easements for Stormwater Drainage Facilities Over Club Property. Declarant currently owns the Club Property. Declarant, as Club Owner, does hereby grant and establish, to and for the benefit of the Owners and the Association, easements for the drainage of stormwater runoff through and into such stormwater drainage facilities, including drainage swails, conduits, pipes, and detention ponds, as are constructed and located by the Club Owner on the Club Property from time to time. The Club Owner shall have the exclusive right to determine the location and placement of such facilities, subject to requirements of the City of Raleigh and/or any other governmental authority having jurisdiction, and neither the Association nor any Owner shall have any right with respect thereto. The Club Owner shall be responsible for the Maintenance of such drainage easements, facilities and ponds. Declarant, as Club Owner, does further grant and establish to and for the benefit of the Association the right and easement to enter upon the Club Property and maintain any such stormwater drainage facilities and ponds in the event that the Club Owner, after receipt of written notice from the Association, has failed for a period of thirty (30) days to maintain such facilities. The Club Owner shall reimburse the Association for any amounts expended by the Association for such Maintenance.

Section 9. Entrance Monuments. Declarant has the right but not the obligation to install an entrance monument and related improvements ("Entrance Monument") on any Lot which is specified as a Lot upon which an Entrance Monument may be established in any Supplemental Declaration which is filed in the Wake County Public Registry. Declarant hereby

reserves for the benefit of Declarant and grants to the Association an easement over, under and across such Lot(s) for the installation and maintenance of such Entrance Monument.

Section 10. Encroachment Easements for Improvements Constructed by Declarant. Declarant does hereby grant, declare, and establish easements over all Lots for the encroachment of improvements now or hereafter constructed by the Declarant on adjacent Lots, Common Area or rights-of-way to the extent that such improvements actually encroach, including, but not limited to, such items as sidewalks, provided such encroachment does not interfere with the reasonable use of the Lots so encroached upon.

ARTICLE XI.

MAINTENANCE

Section 1. Duty of Maintenance. Unless otherwise delegated to a Sub-Association, the Owner of each Lot or Dwelling Unit in the Property shall have the duty and responsibility, at such Owner's sole cost and expense, to keep and Maintain such Lot or Dwelling Unit, including all Improvements thereon, ground and stormwater drainage easements or other rights-of-way incident thereto, in accordance with the terms and provisions of the Declaration and in a well-maintained, safe, clean and attractive condition at all times. Such Maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Lawn mowing and maintenance on a regular basis, including (subject to any applicable governmental laws or regulations) any portions of a public or private street right of way adjacent to any boundary of the Lot or Dwelling Unit;
- (c) Tree and shrub pruning and removal of dead or diseased trees and shrubs, or trees that pose a safety hazard;
- (d) Watering, by means of a lawn sprinkler system or hand watering as needed;
- (e) Keeping exterior lighting and mechanical facilities in working order;
- (f) Keeping lawn and garden areas alive;
- (g) Removing any dead plant material;
- (h) Keeping vacant land well maintained and free of trash and weeds;
- (i) Keeping parking areas and driveways in good repair;
- (j) Complying with all governmental health and police requirements;

- (k) Repainting of Improvements; and
- (l) Repair of exterior damage to Improvements.

Section 2. Owner's Obligations to Repair. Except for those portions, if any, of each Lot or Dwelling Unit which the Association or a Sub-Association is required to maintain or repair hereunder, each Owner shall, at such Owner's sole cost and expense, maintain and repair such Owner's Lot or Dwelling Unit and the Improvements situated thereon, keeping the same in good condition and repair and in compliance with the covenants, conditions and restrictions herein contained. In the event that any Owner shall fail to maintain and repair such Owner's Lot or Dwelling Unit and/or such Improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or at law or in equity, and without waiving any of such alternative remedies, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot or Dwelling Unit and the exterior of the buildings and any other improvements (including, without limitation, all Improvements) erected thereon; and each Owner (by acceptance of a deed for a Lot or Dwelling Unit) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due. The Association, at the cost of the Owner of the affected Lot or Dwelling Unit, shall, if the Owner of such affected Lot or Dwelling Unit fails to promptly (and in any event, within sixty (60) days following the date of the casualty) do so following the date of occurrence of the hereinafter described damage, cause any and all improvements situated upon a Lot or Dwelling Unit which are damaged or destroyed by fire or other casualty to be repaired and/or removed so as not to present an unsightly appearance and/or unsafe condition, with the cost of same to be charged to and collected from the Owner in the manner provided in this Section.

Section 3. Enforcement. If any such Owner (or occupant of such Owner's Lot or Dwelling Unit) has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration, then the Association or Declarant (for so long as there is Class B Membership) 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. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association or the Declarant, acting through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability to any Person for damages for wrongful entry, trespass or otherwise. The Owner of a Lot or Dwelling Unit on which such work is performed shall be liable to the Declarant or the Association for the cost of such work, together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the highest lawful rate from the date(s) such amounts are expended until repaid, and for all costs and expenses (including attorney fees) incurred by Declarant or the Association in seeking the compliance of such Owner with the duties and responsibilities of Owners hereunder, and shall reimburse the Association or the Declarant, as the case may be, on demand for such costs and expense (including attorney fees and interest). If

such Owner shall fail to reimburse the Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by the Association or the Declarant, then, without limitation of any other rights of the Association or Declarant, the Association may issue an individual assessment against such Owner, and may enforce and collect the same, as provided in the Sections of this Declaration relating to assessing, enforcing and collecting assessments.

ARTICLE XII.

THE CLUB AND GOLF COURSE

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 XII.

Section 2. The Club. The Club Property is being developed by Declarant as a for-profit club and recreational area in conjunction with the development of the Property. Declarant or other parties may from time to time develop club facilities within the Club Property (including, without limitation, the Golf Course, a clubhouse with exercise facility, tennis courts and swimming pools) (the "Club Facilities"). The Club Facilities shall be developed and provided at the discretion of Declarant. 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, 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 4 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 Club, the members of the Club, their visitors, guests and invitees shall have certain perpetual non-exclusive easements over the Property as set forth in Article X hereof; provided, however, such easements, as they relate to the use of the Common Areas by the Club or its members, their visitors, guests and invitees, shall be only as to those portions of the Common Areas necessary for such persons' use. Each Owner acknowledges that the use of the Common Areas by the Club or its Members, their visitors, guests and invitees may increase the number of people using the Common Areas. Any disputes as to what constitutes a normal purpose or what portions of the Common Areas are necessary for such persons' use shall, during the term of this Declaration, be

determined by Declarant in its sole and absolute discretion. Declarant, and upon termination of the Class B Membership, the Association reserves the right, and, in its sole discretion and with no other approval being required, to impose upon the Common Areas such other easements which are required for the use and enjoyment of the Club Property. The location of a Lot or Dwelling Unit within the Property may result in nuisances or hazards to such Lot or Dwelling Unit, or to persons on, making use of or in transit to or from such Lot or Dwelling Unit, or to property on such Lot or Dwelling Unit, as a result of normal Club or Golf Course operations. Each Owner covenants for itself, its successors in interest and assigns, and its contractors, tenants, subcontractors, guests and invitees that it shall assume all risks associated with such location, including, but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such Club activities, and shall indemnify and hold harmless the Master Association, any Association or Sub-Association, Declarant, the Club Owner, the Club, the Golf Course, any other entity owning or managing the Golf Course or the Club, and any of their officers, directors, agents or employees, from any and all liabilities, claims or expenses, including attorneys' fees and expenses, arising from such property damage or personal injury. Nothing in this Article XII shall restrict or limit any power of Declarant, the Club Owner or any entity owning or managing the Golf Course to change the design of the Golf Course, and such changes, if any, shall not nullify, restrict or impair the covenants contained herein.

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 MAY HAVE 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 Course. While Owners shall have the right of quiet enjoyment to their portion of the Property, there shall be no activity on any Lot, Dwelling Unit or other portion of the Property which is contiguous to the Golf Course or within a distance of one hundred feet (100') from any boundary of the Golf Course that unreasonably disturbs play, or the enjoyment of the Golf Course, by members and guests thereof, including, without limitation, undue noise, unsightly trash and debris, or any other noxious or offensive activity. Typical noises and activities associated with normal construction activities on Lots, Dwelling Units or other portions of the Property shall, however, be permitted except during the Golf Tournament, as herein defined. The requirements of this paragraph are in addition to the provisions in Article VIII, Sections 25 and 29 hereof; to the extent the requirements of this paragraph are inconsistent with the terms of Article VIII, the terms and provisions of this paragraph shall control.

Section 4. Golf Tournament. In addition to the restrictions set forth in Article XII, Section 3 above which shall apply at all times, during any tournament on the Golf Course 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 5. Pets. Any pet shall be kept on a leash whenever such pet is not on its owner's property and shall be kept off the Club Property and the Golf Course at all times.

Section 6. Enforceability. The rights and obligations to implement the enforcement of the provisions of this Article XII 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 XII.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS

Section 1. Duration. This Declaration and the terms, covenants, restrictions and provisions set forth herein shall run with and bind the Property and shall inure to the benefit of every Owner of a Lot in the Property, including Declarant, and their respective heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded and continuing through and including December 31, 2030. Beginning on and including January 1, 2031, the easements, covenants, conditions and restrictions herein shall be automatically extended for successive period(s) of ten (10) years each unless, at a duly called annual or special meeting of the Association at which a quorum is present held prior to the expiration of the applicable time period, termination of this Declaration is approved by the affirmative vote of seventy-five percent (75%) or more of the votes entitled to be cast by the Members present or represented by proxy. A vote by the membership on termination of this Declaration may be held only upon presentation to the Association of a petition for termination signed by Members possessing no less than twenty-five percent (25%) of the total eligible vote of the membership of the Association, which petition, in the case of an annual meeting of the Association, shall be presented to the Association prior to the date that notice of the annual meeting is sent to the

Members. The Association shall give written notice of any annual or special meeting, at which termination of this Declaration is to be considered and voted upon to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth that termination of this Declaration will be considered and voted upon at such meeting. If the membership votes to terminate this Declaration, such termination shall be effective upon the expiration of the then applicable time period for which the Declaration is in existence, or shall be effective on such date thereafter as may be specified in the resolution of termination passed by the membership as required herein (it being the intention of this Section, notwithstanding anything to the contrary appearing herein, that if the membership has voted to terminate this Declaration, the membership may set a date of termination that may result in this Declaration continuing to be in effect for a period of less than ten (10) years following the expiration of a preceding time period in which this Declaration was in effect).

The quorum required at the annual or special meeting at which termination of this Declaration is to be considered by the membership pursuant to the petition filed with the Association shall be the presence of Members plus proxies entitled to cast sixty percent (60%) or more of the total vote of the membership. If such quorum is not present, subsequent meeting(s) may be called until a quorum is present, subject to the same notice requirements, and the required quorum at such subsequent meeting(s) shall be one-half (1/2) of the required quorum at the immediately preceding meeting.

If the Members vote to terminate this Declaration in accordance with the foregoing requirements, then the President and Secretary of the Association shall execute in recordable form a certificate which shall set forth at least the following information: the Resolution of Termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting, was given, the total number of votes required to constitute a quorum at such meeting; the total number of votes present at such meeting; the total number of votes necessary to adopt the resolution terminating the Declaration; the total number of votes cast in favor of such resolution; and the total number of votes cast against the resolution. Such certificate shall be recorded in the Wake County, North Carolina Registry no later than thirty (30) days following the date such resolution of termination is passed by the membership, and such certificate may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendment. Subject to the limitations hereinafter contained, this Declaration or any Supplemental Declaration hereto may be amended or modified at any time prior to December 31, 2030 by an instrument signed by the Owners entitled to exercise not less than seventy five (75%) of the total votes in the Association as set forth in this Declaration, provided, however, that no such amendment shall be effective without the written consent of Declarant so long as there is Class B Membership, and in no event shall any amendment limit the rights of Declarant under this Declaration so long as there is a Class B Membership. With respect to any amendments affecting specific Limited Common Property, the foregoing percentages are required only of those Owners of Lots or Dwelling Units that are located in the phase or section of the Development to which such Limited Common Area relates.

In addition to the foregoing rights, and notwithstanding anything to the contrary that may appear herein, Declarant may (at Declarant's option) at any time and from time to time amend or modify this Declaration and any Supplemental Declaration without obtaining the consent or approval of the Members or any other person or entity if such amendment or modification is necessary for any one or more of the following purposes: to correct an obvious typographical error; to cause this Declaration or any such Supplemental Declaration to comply with the requirements of FHA (Federal Housing Administration), VA (Veterans Administration), Fannie Mae (Federal National Mortgage Administration), Office Of Interstate Land Sales Registration of the Department Of Housing And Urban Development (OILSR) or other similar agency; or as may be necessary to establish or maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina.

All amendments to this Declaration must be recorded in the Wake County, North Carolina Registry and shall not become effective until recorded. With respect to amendments that require approval of the Owners, all such amendments also shall be executed by the Association, following determination by the Board that the amendment has been duly approved by the required percentage of Owners (for the purpose of this determination, the Board may rely on its most current membership list and shall not be required to conduct any title examination of any Lot to determine ownership thereof). The Board shall make its determination (and cause the amendment(s) to be recorded if the Board determines that the required number of Owners have executed the amendment(s)) within thirty (30) days of receipt of the proposed amendment(s) purportedly signed by the required number of Owners. If the Board determines that the required number of Owners have executed the proposed amendment(s), the Board shall cause the amendment(s) to be recorded.

With respect to amendments by the Declarant which do not require the assent of the Owners, the Association also shall execute such amendments prior to the recordation thereof so that such amendments may be indexed in the Wake County Registry in the name of the Association as well as in the name of the Declarant.

Section 3. Dissolution or Insolvency of the Association. The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by not less than three fourths (3/4) of the Members of each class of membership, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Area not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, shall be offered to the City of Raleigh, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the City of Raleigh or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be

conveyed by the Association to the City of Raleigh or such other appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot or Dwelling Unit to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot or Dwelling Unit and the public or private street(s) on which such Lot or Dwelling Unit is located, and subject to all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

In the event that the City of Raleigh or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

Section 4. Enforcement. Declarant, the Association, the Sub-Associations and every Owner shall have the right to enforce the terms, covenants, conditions, restrictions, easements, charges and liens for which provision is made in this Declaration, which enforcement shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any Person violating or attempting to violate any such term, covenant, condition, restriction, easement, charge or lien either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association, the Sub-Associations, Declarant or any Owner to enforce any such term, covenant, condition, restriction, easement, charges or lien shall in no event be deemed a waiver of the right to do so thereafter or a waiver of any other or future violation of any of same; provided, however, each Sub-Association shall have the right to enforce the terms, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration only with respect to the Sub-Community Property which such Sub-Association was formed to control; pursuant to an Additional Declaration contemplating such Sub-Association's right to enforce this Declaration.

Section 5. 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 and phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said 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 6. Notice. Except as otherwise provided herein, whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of 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. It shall be the duty of each Owner to keep the Association informed of such Owner's current mailing address and telephone number. The Association may use the address of such Owner's Lot listed with the Wake County Supervisor.

Section 7. 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 8. Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

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

Section 10. Combination of Lots. For so long as there is a Class B Membership, no Lot shall be subdivided without the written consent of Declarant. One or more Lots may be combined into a single Lot with the written consent of Declarant and, upon such combination and consent of Declarant, the resulting Lot shall be considered as one Lot for the purposes of this Declaration. Provided, the foregoing shall not prohibit or restrict the right (which is hereby reserved) of Declarant to subdivide, combine, resubdivide, recombine, or re-record maps relating to, any Lots subject to this Declaration.

Section 11. Conflict Between Declaration and Articles or Bylaws. Whenever there exists a conflict between the provisions of this Declaration and the Articles or Bylaws, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control.

Section 12. Laws of North Carolina and the United States. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America. Whenever there is a conflict between the provisions of this Declaration, any Supplemental Declaration or the Bylaws and any applicable laws of the State of North Carolina, the United States or any other governmental entity having jurisdiction over the Property, such laws shall control.

Section 13. Assignment. Declarant specifically reserves the right, in its sole discretion at any time and from time to time to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration or under any Supplemental Declaration. All assignments shall be recorded with the Office of the Register of Deeds, Wake County, North Carolina.

Section 14. Exempt Property. Notwithstanding anything to the contrary appearing in this Declaration, all portions of the Property that are dedicated to the City of Raleigh (or other governmental entity) for public use or with respect to which title is transferred to the City of Raleigh (or other governmental entity) for public use shall be exempt from the terms and conditions of this Declaration as long as such portions of the Property are held or used for public purposes, including, without limitation, street rights of way, sanitary sewer easements and Dedicated Common Area.

Section 15. Recordation Of Documents. Whenever there is any reference in this Declaration to the recordation of documents, unless there is a contrary reference associated therewith, the place of recordation shall be in the office of the Register of Deeds for Wake County, North Carolina.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed, all by authority of its Board of Directors, the day and year first above written.

TOLL AT BRIER CREEK LIMITED
PARTNERSHIP

[SEAL]

By: Toll NCGP Corp., its General Partner

Attest:

Charles T. Wanta
Asst. Secretary
(affix corporate seal here)

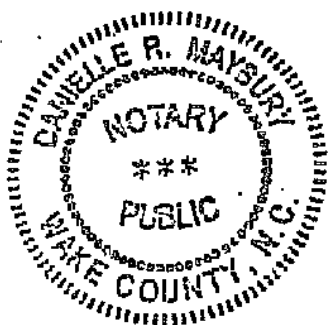
By:

Thomas A. Anhalt
Vice President

NORTH CAROLINA, WAKE COUNTY

I, DANIELLE R. MAYBURY, a Notary Public of the County and State aforesaid, certify that CHARLES WANTA personally appeared before me this day and acknowledged that he/she is CHARLES WANTA Secretary of Toll NCGP Corp., General Partner of Toll at Brier Creek Limited Partnership, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its THOMAS ANHALT President, sealed with its corporate seal, and attested by him/her as its CHARLES WANTA Secretary.

Witness my hand and official stamp or seal, this 30th day of MAY, 2000.



Danielle R. Maybury
Notary Public
My Commission Expires: 9.22.03

Exhibit A

Being all of the property located in Wake County, North Carolina, shown on map thereof recorded in:

(1) Map Book 1999 at Pages 1620, 1440, 1441, 1442, 1443, 1444 and 1445 of the Wake County Registry, LESS AND EXCEPTING, however, (a) all property shown on said maps marked as "N/F Toll at Brier Creek" and (b) Lot 1 and Lot 2 as shown in Map Book 1999 at Page 1445 of the Wake County Registry;

(2) Map Book 1999 at Pages 1993, 1994, 1995 and 1996 of the Wake County Registry; and

(3) Map Book 1999 at Pages 2203, 2204, 2205, 2206, 2207, 2208 and 2209 of the Wake County Registry, LESS AND EXCEPTING, however that property shown on said maps as "Clubhouse and Recreation Parcel" and "Golf Course."

