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WAKE COUNTY, NC 296
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REGISTER OF DEEDS
PRESENTED & RECORDED ON
07/16/2007 AT 12:17:11

BOOK:012655 PAGE:01690 - 01747

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR LENNOX AT BRIER CREEK

CONTENTS

Page

ARTICLE I DEFINITIONS ..... - 3 -
Section 1. "Act" ..... - 3 -
Section 2. "Association" ..... - 3 -
Section 3. "Board of Directors" and "Board" ..... - 3 -
Section 4. "Bylaws" ..... - 3 -
Section 5. "Declarant" ..... - 3 -
Section 6. "Declarant Control Period" ..... - 3 -
Section 7. "Declaration" ..... - 4 -
Section 8. "Limited Sub-Association Common Area" ..... - 4 -
Section 9. "Live/Work Unit" ..... - 4 -
Section 10. "Lot" ..... - 4 -
Section 11. "Master Associations" ..... - 4 -
Section 12. "Master Declarations" ..... - 4 -
Section 13. "Member" ..... - 4 -
Section 14. "Owner" ..... - 4 -
Section 15. "Properties" or "Subdivision" ..... - 4 -
Section 16. "Sub-Association Common Area" ..... - 4 -
Section 17. "Sub-Association Common Area Easement" ..... - 5 -
Section 18. "Unit" or "Dwelling" ..... - 5 -

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION ..... - 6 -
Section 1. Existing Property ..... - 6 -

ARTICLE III MEMBERSHIP AND VOTING RIGHTS ..... - 6 -
Section 1. Membership ..... - 6 -
Section 2. Voting Rights ..... - 6 -
Section 3. Declarant's Right to Appoint Directors and Officers of the Association ..... - 6 -
Section 4. Vacant/Leased Dwellings ..... - 7 -
Section 5. Leasing Restrictions. ..... - 7 -

ARTICLE IV PROPERTY RIGHTS ..... - 7 -
Section 1. Owners' Easements of Enjoyment and Access ..... - 7 -
Section 2. Delegation of Use ..... - 8 -
Section 3. Conveyance of Title To The Association ..... - 9 -
Section 4. Regulation and Maintenance of Sub-Association Common Area and Sub-Association Common Area Easements ..... - 10 -

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT ..... - 11 -
Section 1. Creation of the Lien and Personal Obligation of Assessments ..... - 11 -
Section 2. Purposes of Assessments ..... - 11 -
Section 3. Maximum Annual Assessment ..... - 11 -
Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets ..... - 11 -

Section 5. Special Assessments ..... - 12 -
Section 6. Effect of Nonpayment of Assessments; Remedies ..... - 13 -
Section 7. Subordination of the Lien to Mortgages ..... - 13 -
Section 8. Exempt Property ..... - 13 -
Section 9. Working Capital Fund ..... - 13 -
Section 10. Declarant's Obligation to Fund Operating Deficits ..... - 13 -

ARTICLE VI MAINTENANCE OF LOTS, UNITS AND LIVE WORK UNITS ..... - 13 -
Section 1. Association's Responsibility ..... - 13 -
Section 2. Owner's Responsibility; Remedy for Owner's Failure to Maintain - 14 -
Section 3. Assessment of Cost ..... - 14 -

ARTICLE VII RIGHTS OF LENDERS ..... - 14 -
Section 1. Books and Records ..... - 14 -
Section 2. Notice to Lenders ..... - 15 -
Section 3. Payment of Taxes and Insurance Premiums ..... - 15 -
Section 4. Collection of Assessments ..... - 15 -

ARTICLE VIII EASEMENTS ..... - 15 -
Section 1. Access and Utility Easements ..... - 15 -
Section 2. Easement for Support ..... - 16 -
Section 3. Easement For Encroachments ..... - 16 -
Section 4. Easement Over Sub-Association Common Area ..... - 16 -
Section 5. Declarant's and Association's Easement Upon Lots ..... - 16 -

ARTICLE IX ARCHITECTURAL CONTROL ..... - 17 -

ARTICLE X USE RESTRICTIONS ..... - 17 -
Section 1. Use of Lots and Sub-Association Common Area ..... - 18 -
Section 2. Use of Accessory Structures ..... - 18 -
Section 3. Nuisances ..... - 18 -
Section 4. Animals ..... - 18 -
Section 5. Signs ..... - 18 -
Section 6. Parking ..... - 19 -
Section 7. Antennae and Roof Structures ..... - 20 -
Section 8. Garbage; Unsightly Storage ..... - 20 -
Section 9. Fines ..... - 20 -
Section 10. Master Declarations ..... - 20 -
Section 11. Live/Work Units ..... - 20 -
Section 12. Additional Use Restrictions For Live/ Work Units ..... - 23 -

ARTICLE XI GENERAL PROVISIONS ..... - 25 -
Section 1. Enforcement ..... - 25 -
Section 2. Amendment ..... - 25 -
Section 3. Subdivision of Lots ..... - 26 -
Section 4. Rules and Regulations ..... - 26 -
Section 5. Condemnation/Casualty ..... - 26 -
Section 6. Association Contracts and Leases During Declarant Control Period ..... - 27 -
Section 7. Evidence of Member Approval ..... - 27 -

Section 8. **Number and Gender** ..... - 27 -
Section 9. **Captions** ..... - 27 -
Section 10. **Severability** ..... - 27 -
Section 11. **Conflicts** ..... - 28 -
Section 12. **Rule Against Perpetuities** ..... - 28 -

ARTICLE XII RALEIGH CITY CODE REQUIREMENTS ..... - 28 -

PART A DEFINITIONS AND GENERAL REQUIREMENTS ..... - 28 -
Section 1. **Definitions** ..... - 28 -
Section 2. **Applicability** ..... - 34 -
Section 3. **Conflicts** ..... - 34 -
Section 4. **Amendment of Declaration** ..... - 35 -
Section 5. **Assessments** ..... - 35 -
Section 6. **Membership and Governance** ..... - 38 -
Section 7. **Permanently Protected Undisturbed Open Space Areas** ..... - 39 -
Section 8. **Tree Conservation** ..... - 39 -
Section 9. **Insurance** ..... - 39 -
Section 10. **Indemnification** ..... - 39 -
Section 11. **On-Street Parking** ..... - 40 -
Section 12. **Sight Triangles** ..... - 40 -
Section 13. **Annexed Property** ..... - 40 -
Section 14. **Access Easement for Repair of Structures** ..... - 41 -
Section 15. **Access for Governmental Agencies** ..... - 41 -
Section 16. **Conveyance or Dedication of Common Areas** ..... - 41 -
Section 17. **Private Utility Lines** ..... - 42 -
Section 18. **Landscape Easements** ..... - 42 -

PART B STORMWATER ..... - 42 -
Section 1. **Stormwater Control Measures** ..... - 42 -
Section 2. **Creation of Stormwater Assessments** ..... - 43 -
Section 3. **Purpose of Stormwater Assessments** ..... - 44 -
Section 4. **Assignment of Collection Rights and Lien Rights the City** ..... - 44 -
Section 5. **Effect of Assignment** ..... - 45 -
Section 6. **Annexation of Additional Property** ..... - 45 -
Section 7. **Drainage Easement** ..... - 46 -
Section 8. **Joint and Several Liability** ..... - 46 -
Section 9. **Relocation of Drainage Easements** ..... - 46 -

PART C TOWNHOUSE DEVELOPMENT ..... - 47 -
Section 1. **Open Space** ..... - 47 -
Section 2. **Common Party Walls** ..... - 48 -

PART D PRIVATE STREETS ..... - 49 -
Section 1. **Private Streets** ..... - 49 -

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR LENNOX AT BRIER CREEK

THIS DECLARATION is made by **STANDARD PACIFIC OF THE CAROLINAS, LLC**, a Delaware limited liability company (hereinafter "Declarant"), and shall be effective on the date of its recordation in the Wake County Registry.

RECITALS:

WHEREAS, Declarant is the owner of the real property described in **Exhibit A** (the "Existing Property"), which Declarant is developing into a community of attached single-family townhomes and attached live/work townhomes known as Lennox at Brier Creek (together with any additional annexed real property hereinafter sometimes referred to as the "Subdivision"); and

WHEREAS, the Subdivision comprises a portion of a master planned community known as Brier Creek, which is subject to that certain Declaration of Covenants, Conditions and Restrictions for Brier Creek recorded in Book 8002, Page 638, Wake County Registry, as amended and supplemented from time to time (the "Brier Creek Master Declaration"). Brier Creek Owners Association, Inc., a North Carolina non-profit corporation (the "Brier Creek Master Association"), has been created to enforce the provisions of the Brier Creek Master Declaration. Declarant is defined in the Brier Creek Master Declaration as a "Developer," and the Existing Property is defined as a "Development Parcel." This Declaration has been approved by the declarant under the Brier Creek Master Declaration and constitutes "Approved Developer Covenants" as such term is defined in the Brier Creek Master Declaration. In addition, the site plans for the Subdivision and the architectural plans for the proposed development of the Subdivision have been approved by the Architectural Review Committee under the Brier Creek Master Declaration. As such, after the initial construction of improvements within the Subdivision, no further approval for modifications or additions to such improvements shall be required to be obtained from the Architectural Review Committee under the Brier Creek Master Declaration, but rather all architectural control, review and approval shall be governed in accordance with Article IX hereunder. Declarant intends to assign its rights and to delegate its duties as an "Owner" under the Brier Creek Master Declaration and as a member of the Brier Creek Master Association to the Association (hereinafter defined), and the Association has joined in the execution of this Declaration to accept such assignment and assume such obligations. It is not contemplated that the Existing Property or the Lots constituting the Subdivision shall be subject to assessment under the Brier Creek Master Declaration, but, in the event assessments are levied against the Lots by the Brier Creek Master Association, the assessments hereunder shall include the amounts of assessments levied against the Lots pursuant to the Brier Creek Master Declaration and shall be collected by the Association and paid to the Brier Creek Master Association; and

WHEREAS, the Subdivision also comprises a portion of the Village Center community within Brier Creek known as Brier Creek Village Center, which is subject to that certain Master Declaration of Covenants, Conditions and Restrictions for Brier Creek Village Center recorded in Book 11606, Page 629, Wake County Registry, as amended and supplemented from time to time (the "Brier Creek Village Center Master Declaration"). Brier Creek Village Center Master

Association, Inc., a North Carolina non-profit corporation (the "Brier Creek Village Center Master Association"), has been created to enforce the provisions of the Brier Creek Village Center Master Declaration. Declarant intends to assign its rights and to delegate its duties as an "Owner" under the Brier Creek Village Center Master Declaration and as a member of the Brier Creek Village Center Master Association to the Association (hereinafter defined), and the Association has joined in the execution of this Declaration to accept such assignment and assume such obligations. It is contemplated that the Existing Property constituting the Subdivision shall be subject to assessment under the Brier Creek Village Center Master Declaration, and the assessments hereunder shall include the amounts of assessments levied against the Existing Property pursuant to the Brier Creek Village Center Master Declaration and shall be collected by the Association and paid to the Brier Creek Village Center Master Association; and

WHEREAS, the Brier Creek Master Declaration and the Brier Creek Village Center Master Declaration are collectively referred to herein as the "Master Declarations," and the Brier Creek Master Association and the Brier Creek Village Center Master Association are collectively referred to herein as the "Master Associations; and

WHEREAS, the Association has concurrent jurisdiction over the Subdivision, but this Declaration and the rights and powers of the Association are subordinate to the Master Declarations and the rights and powers of the Master Associations; and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Sub-Association Common Area (hereinafter defined) within the Subdivision and of the exterior of the Units and the Live /Work Units (each hereinafter defined), and to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject the real property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Sub-Association Common Area, to maintain the exterior of the Units and the Live /Work Units, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has incorporated Lennox at Brier Creek Homeowners Association, Inc. for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, (i) Declarant declares that the real property described in **Exhibit A** to this Declaration, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof; and (ii) Declarant hereby assigns all of its right, title and interest as an "Owner" under the Master Declarations and as a member of the Master Associations to the Association, and the Association hereby accepts such assignment and assumes the obligations of Declarant as an "Owner" under the Master Declarations and Master Associations.

ARTICLE I

DEFINITIONS

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

Section 1. **"Act"**. *See* Section 1(a) of Part A of Article XII.

Section 2. **"Association"** shall mean and refer to **Lennox at Brier Creek Homeowners Association, Inc.**, a North Carolina nonprofit corporation, its successors and assigns. *See also* Section 1(d) of Part A of Article XII.

Section 3. **"Board of Directors" and "Board"**. *See* Section 1(e) of Part A of Article XII.

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

Section 5. **"Declarant"** shall mean and refer to **Standard Pacific of the Carolinas, LLC**, a Delaware limited liability company, formerly known as Westfield Homes of the Carolinas, LLC. It shall also mean and refer to any person, firm or corporation to whom or which Declarant may assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry. *See also* Section 1(j) of Part A of Article XII.

Section 6. **"Declarant Control Period"** shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association and the officers of the Association. *See also* Section 1(l) of Part A of Article XII. The Declarant Control Period shall terminate upon the earlier of the following to occur:

(a) December 31, 2017;

(b) Not later than four months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, a sufficient number of votes (at the 10-to-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or

(c) Relinquishment or transfer of all Special Declarant Rights as provided in Section 47F-3-104 of the Act.

Section 7. **"Declaration"** shall mean and refer to this "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Lennox at Brier Creek", and all amendments thereto and supplements thereof. *See also* Section 1(m) of Part A of Article XII.

Section 8. **"Limited Sub-Association Common Area"** shall mean a portion of the Sub-Association Common Area primarily benefiting one or more, but less than all, Owners, as more particularly described in Article IV, Sections 1 and 2.

Section 9. **"Live/Work Unit"** shall mean and refer to any building or portion thereof located on Lots 249-276, inclusive, as shown on the map recorded in Book of Maps 2007, Pages 1533-1544, Wake County Registry. Residential uses and office and/or commercial uses constituting a Home Based Business as defined and subject to the restrictions set forth in Article X, Section 11 may be combined in a Live/Work Unit to provide live/work opportunities envisioned by the zoning regulations applicable to the Properties.

Section 10. **"Lot"** shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of any portion of the Properties (regardless of whether the Lot has been subjected to this Declaration as provided in Article II hereof), with the exception of any Sub-Association Common Area owned in fee by the Association, common property owned by the Master Associations or another sub-association of the Master Associations, and any public street rights of way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through recordation of a new subdivision plat, any newly platted lot shall thereafter constitute a Lot. *See also* Section 1(r) of Part A of Article XII.

Section 11. **"Master Associations"** shall mean and refer to the Brier Creek Master Association and the Brier Creek Village Center Master Association. *See also* the Recitals.

Section 12. **"Master Declarations"** shall mean and refer to the Brier Creek Master Declaration and the Brier Creek Village Center Master Declaration, including all amendments thereto and supplements thereof. *See also* the Recitals.

Section 13. **"Member"** shall mean and refer to every person or entity who or which holds membership in the Association.

Section 14. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 15. **"Properties" or "Subdivision"** shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to Article XII Part A Section 13. *See also* Article II.

Section 16. **"Sub-Association Common Area"** shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or by easement, for the common benefit of the Owners of Lots within the Properties. Sub-Association Common Area also includes all other property and improvements, if any, required to be included as such by the Code, and all other property and improvements, if any, declared to be Sub

Association Common Area by this Declaration or by the Declarant or the Association. *See also* Section 1(h) of Part A of Article XII hereof. Sub-Association Common Area shall be maintained by the Association unless maintained by the Person owning the real property as to which the Association has only an easement or other right of use, or conveyed to or owned by another nonprofit entity formed for similar purposes, or dedicated to public use and accepted by a public agency, authority, or utility.

Without limiting the generality of the foregoing, the term Sub-Association Common Area includes specifically: (i) any area shown on the recorded maps of the Properties as "Sub-Association Common Area," "S.A.C.A.", or "S.A.C.A./Clubhouse Area," or by similar designation (ii) any private alley or alley easement, (iii) any private streets, private rights-of-way, and improvements thereon or therein, but excluding the rights-of-way of public streets, unless there are encroachments therein governed by an encroachment agreement with the City that requires maintenance by Declarant or the Association; (iv) any entrance or other monumentation or signage identifying the Subdivision; (v) Stormwater Control Measures and the area within any drainage easements and the facilities constructed therein which serve more than one Lot and are not maintained by any governmental authority, the Master Associations, or another sub-association, (vi) water and sewer lines (and the easements associated therewith) within the boundaries of the Properties which serve more than one Lot and are not located within a public utility easement or a public street right-of-way, and are not owned or maintained by the Master Associations or another sub-association.

The Sub-Association Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility, the Master Associations, or another sub-association.

The provisions of Article XII relating to "Common Area" shall apply to all "Sub-Association Common Area" as defined by this Declaration and the terms "Common Area" and "Sub-Association Common Area" shall be used interchangeably in this Declaration. The term shall include Limited Sub-Association Common Area as defined above.

Section 17. **"Sub-Association Common Area Easement"** shall mean and refer to Sub-Association Common Area as to which the Association has only an easement interest, and not a fee simple interest. The provisions of Article XII relating to "Common Area" shall apply to all property classified as a "Sub-Association Common Area Easement" except for the provisions of Article XII, Section 16, requiring that all Common Area be dedicated to the Association in fee simple.

Section 18. **"Unit" or "Dwelling"** shall mean and refer to any building or portion thereof within the Properties that is designated and intended for use and occupancy as a residence by a single family, whether by the Owner of such Unit or by tenants or lessees of such Owner (if leasing of a Dwelling is permitted in accordance with Article III, Section 5).

ARTICLE II

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

Section 1. **Existing Property**. The real property that, at the time of recording of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto and incorporated herein by reference.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. **Membership**. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment. The foregoing is not intended to include persons/entities who/which hold an interest merely as security for the performance of an obligation.

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

There shall be two (2) classes of membership with respect to voting rights:

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

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to ten (10) votes for each Lot that it owns in the Properties as same are shown on recorded maps or on preliminary subdivision plans or site plans filed with the City of Raleigh (each such Lot being a "Class B Lot"), regardless of whether or not such Lot has been subjected to this Declaration. Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. **Declarant's Right to Appoint Directors and Officers of the Association**. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the directors and officers of the Association.

Section 4. **Vacant/Leased Dwellings**. If the Owner of a Lot ceases to occupy the Unit or Live/Work Unit constructed thereon as his own personal living quarters or, if any Unit or Live/Work Unit within the Properties is leased for rental purposes to tenants, but only as permitted by Article III, Section 5 below, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots owned by a Class A Member and specifically excludes Lots owned by the Declarant.

Section 5. **Leasing Restrictions.** Except with respect to construction trailers or model homes which may be used or occupied by Declarant or any builder to whom Declarant gives written permission and except in cases of emergency or undue hardship, no Owner shall lease or rent its Lot except as may be permitted by the rules and regulations adopted by the Association. The Board shall determine instances of emergency and undue hardship on a case-by-case basis, and such determination shall be made in the Board's sole and absolute discretion. The leasing of Lots in the Properties that is not approved by the Board shall be a violation of this Declaration and the rules and regulations, and Declarant and the Association and any Owner within the Properties shall have the right to employ any and all remedies available at law or in equity to enjoin the leasing or rental of such Lot.

ARTICLE IV

PROPERTY RIGHTS

Section 1. **Owners' Easements of Enjoyment and Access**. Except as limited by Section 2 of this Article IV and by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Sub-Association Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) subject to Section 1(e), Part C of Article XII, the right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Sub-Association Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard and present evidence, to suspend the voting rights of an Owner and the right of an Owner to use to Sub-Association Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however that the Association may not suspend an Owner's right to use of any Sub-Association Common Area providing access or utilities to his Lot.

(c) the right of the Association to dedicate or transfer all or any part of the Sub-Association Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or

transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, greenway, utility and drainage facilities upon, over, under and across the Sub-Association Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Sub-Association Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association to mortgage, pledge, deed in trust, or otherwise encumber any or all of the Sub-Association Common Area as security for money borrowed or debts incurred by the Association, *provided that* the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Sub-Association Common Area for other property and consideration of like value and utility, as provided in Section 1(c) of Part C of Article XII.

(f) The right of the Declarant or the Association to designate portions of the Sub-Association Common Area as Limited Sub-Association Common Area for the exclusive use of Owners of designated Lots within a particular portion of the Subdivision.

Section 2. Delegation of Use.

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

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Lot, or a portion thereof, as their principal residence in Wake County, North Carolina.

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

(d) Limited Sub-Association Common Areas.

(1) **Purpose**. Certain portions of the Sub-Association Common Area may be designated as Limited Sub-Association Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of designated Lots within a particular portion of the Subdivision. By way of illustration and not limitation, Limited Sub-

Association Common Areas may include portions of the recreational facilities, including meeting rooms and pools. All costs associated with maintenance, repair, replacement, and insurance of a Limited Sub-Association Common Area shall be a Limited Common Expense allocated among the Owners of designated Lots within the particular portion of the Subdivision to which the Limited Sub-Association Common Areas are assigned.

(2) **Designation**. Initially, any Limited Sub-Association Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Sub-Association Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Sub-Association Common Area to additional Owners during the Declarant Control Period.

Thereafter, a portion of the Sub-Association Common Area may be assigned as Limited Sub-Association Common Area and Limited Sub-Association Common Area may be reassigned upon approval of the Board and the vote of the members representing a majority of the total Class A votes in the Association, including a majority of the Class A votes within the particular portion of the Subdivision affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration, any such assignment or reassignment shall also require Declarant's written consent.

(3) **Use by Others**. Upon approval of a majority of Owners of designated Lots within the particular portion of the Subdivision to which any Limited Sub-Association Common Area is assigned, the Association may permit Owners of Lots in Subdivision to use all or a portion of such Limited Sub-Association Common Area upon payment of reasonable user fees, which fees shall be used to offset the Limited Common Expenses attributable to such Limited Sub-Association Common Area.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision to an Owner other than Declarant, Declarant will convey to the Association title to those portions of the Sub-Association Common Area to be owned by the Association. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself, and its respective successors and assigns, an easement over, under, across and through the Sub-Association Common Area so long as Declarant owns any Lot within the Properties, for the purpose of constructing any improvements on the Sub-Association Common Area and/or the Lots as it deems necessary or advisable; provided, following construction of improvements, the Sub-Association Common Area shall be restored to its prior condition to the extent practicable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including

statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, the Master Declarations, restrictive covenants applicable to the Properties, utility, drainage, conservation, greenway and other easements of record or shown on the recorded plats of the Properties, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Sub-Association Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Master Associations, the City of Raleigh or other governmental entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Sub-Association Common Area and Sub-Association Common Area Easements. It is the intent of Declarant that the Sub-Association Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, the Declarant, by recording any plat or map of any phase or section of the Subdivision, grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Sub-Association Common Area Easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

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

It is the intent of the Declarant that a Sub-Association Common Area Easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized or approved in writing by the Declarant or the Association. If an Owner of a Lot on which a Sub-Association Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 6 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Sub-Association Common Area (including Sub-Association Common Area Easements) is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Sub-Association Common Area; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Sub-Association Common Area Easement lies, resulting from use of the Sub-Association Common Area; and (iii) pay all

property taxes and other assessments levied against all Sub Association Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance of Sub-Association Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Sub-Association Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Sub-Association Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable verbal notice to the Owner or occupant of such Lot.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. *See* Section 5 of Part A of Article XII.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Sub-Association Common Area; (ii) maintenance, repair and reconstruction of the Sub-Association Common Area and improvements thereon, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) maintenance of Lots and the exterior of Units and Live/Work Units as provided in Article VI hereof; (iv) payment of taxes and public assessments levied against Sub-Association Common Area owned by the Association in fee; (v) procurement of insurance; (vi) employment of attorneys, accountants and other persons or firms for Association business; (vii) payment of principal and interest on funds borrowed for Association purposes; (viii) payment of Common Expenses; *See* Section 1(i) of Part A of Article XII and (ix) such other needs as may arise. *See also* Section 5(b) of Part A of Article XII.

Section 3. Maximum Annual Assessment. Until December 31, 2007, the Maximum Annual Assessment shall be $155.00 per month or $1,860.00 per year for each Class A Lot. The Maximum Annual Assessment for Class B Lots shall be zero during the Declarant Control Period in which the Declarant is obligated to fund the Operating Deficit as set forth in Section 5(f) of Part A of Article XII and thereafter the Maximum Annual Assessment for Class B Lots shall be equal to the Stormwater Assessment then applicable to such Class B Lots. The Maximum Annual Assessment shall increase annually as provided in Section 5(c) of Part A of Article XII.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence on the date this Declaration is recorded in the Wake County Registry.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. The annual assessment for Class B Lots shall be zero during the Declarant Control Period in which the Declarant is obligated to fund the Operating Deficit as set forth in Section 5(f) of Part A of Article XII and thereafter the Maximum Annual Assessment for Class B Lots shall be equal to the Stormwater Assessment then applicable to such Class B Lots; provided, however, that any Lot which contains a dwelling occupied by any person as a residence shall be assessed at the Class A rate. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors. Any monies paid at any time by the Declarant for common expenses or otherwise for or on behalf of the Association shall be credited against past or future assessments due from the Declarant, if any.

The Board of Directors shall adopt a proposed budget for the Association at least annually and shall submit to the Members for ratification as provided in Section 5(c) of Part A of Article XII. Subject to the provisions of this Section and in the aforesaid Section 5(c) of Part A of Article XII, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. As set forth in Section 2 of Part B of Article XII, each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association.

Section 5. **Special Assessments**. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Sub-Association Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expense, *provided that* any such assessment shall have been approved by the Declarant (during the Declarant Control Period) and by not less than two-thirds (2/3) of the votes of the Class A Members present and voting (in person or by proxy) at a meeting of the Members, one of the purposes of which is to vote on the special assessment, and *further provided* that the special assessment for a Class B Lots shall always be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Written notice of any meeting called for the purpose of voting on a special assessment shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting,

the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting.

Section 6. Effect of Nonpayment of Assessments; Remedies. *See* Section 5(d) of Part A of Article XII.

Section 7. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 8. Exempt Property. All Sub-Association Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no Lot devoted to residential use or live/work use shall be exempt from assessments.

Section 9. Working Capital Fund. At the time of closing of the initial sale of each Dwelling or Live/Work Unit constructed on a Lot, a sum equal to two (2) months of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its initial operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 10. Declarant's Obligation to Fund Operating Deficits. *See* Section 5(f) of Part A of Article XII.

ARTICLE VI

MAINTENANCE OF LOTS, UNITS AND LIVE WORK UNITS

Section 1. Association's Responsibility. In addition to maintenance of the Sub-Association Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed on a Lot by the Declarant or the Association, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added Yard Improvements); provided each Owner shall be responsible for watering its Yard Improvements.

The Association shall also be responsible for certain exterior maintenance of the Units and Live/Work Units, including the painting, repair, replacement, and care of exterior building

surfaces (including exterior doors installed as part of the initial construction of the Unit or the Live/Work Unit), roofs, gutters and down spouts, sidewalks, and stoops. The Association shall not be responsible for maintenance or repair of glass surfaces or screens or for any improvements not part of the original construction unless the architectural approval granted by the Association for such subsequent improvements specifically provides that the Association will maintain such improvements. Furthermore: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements or the exterior of any Unit or Live/Work Unit when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity; and (iv) the Association shall not be responsible for repairing any damage caused by the negligent or willful act or omission of the Owner of such Unit or Live/Work Unit or such Owner's tenants, subtenants, or family members, or the guests, invitees or contractors of any of them.

Section 2. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot and Unit or Live/Work Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements that the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Unit or Live/Work Unit erected thereon, and the cost of such exterior maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than fifteen (15) calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Section 3. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 2 of this Article VI, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be a limited special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

ARTICLE VII

RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration,

the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

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

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

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

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

(d) Any condemnation or casualty loss that affects either a material portion of the Subdivision or the Lot securing its mortgage.

Section 3. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Sub-Association Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

Section 4. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under the Declaration.

ARTICLE VIII

EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

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

For a period of ten (10) years from the date hereof, Declarant grants to and reserves for itself and the Association, and their successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, except in tree conservation areas, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the person or entity taking such action shall grade and seed the affected property and restore the affected area to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The person or entity taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Support. Every Lot and Unit or Live/Work Unit which contributes to the lateral and/or vertical support of any adjoining Unit(s) or Live/Work Unit(s) shall be burdened with an easement of support for the benefit of such adjoining Unit(s) or Live/Work Unit(s).

Section 3. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Sub-Association Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Sub-Association Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Sub-Association Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except if such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement Over Sub-Association Common Area. A perpetual, nonexclusive easement over, under and through the Sub-Association Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing reasonable access, ingress and egress to, from and over and the use of the Sub-Association Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Sub-Association Common Area is subject to the easements granted herein.

Section 5. Declarant's and Association's Easement Upon Lots. The Declarant and Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling their obligations under this Declaration and any other laws, ordinances, rules and regulations, public or private, which the Declarant or Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Declarant, the Board of Directors or the manager employed by the Association, creates or may create an imminent danger to the Sub-Association Common Area or improvements thereon.

ARTICLE IX

ARCHITECTURAL CONTROL

After occupancy of the Dwelling or Live/Work Unit constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall or other structure (including, without limitation, play equipment, patios, decks, tree houses, parking pads, and sidewalks) shall be commenced, constructed, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, the plans and specifications shall be deemed disapproved. Declarant shall have the right to charge a reasonable fee, not to exceed $150.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article IX to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board. Declarant shall delegate such authority no later than the end of the Declarant Control Period.

Any use of the term "Declarant" in this Article IX shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by the Declarant.

Declarant shall have and shall exercise the rights set forth herein as to a Lot at all times prior to issuance of a certificate of occupancy or other certificate issued by the City or appropriate governmental entity for the Dwelling or Live/Work Unit constructed on a Lot.

ARTICLE X

USE RESTRICTIONS

Section 1. **Use of Lots and Sub-Association Common Area**. It is the intent of the Declarant that all Lots shall be used only for residential purposes or live/work purposes authorized by Section 11 and Section 12 of this Article. Except as permitted by the Raleigh City Code, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that Home Based Business uses may be conducted within the Live/Work Units and except that the Declarant, real estate brokers, Owners and their agents may show Lots for sale or lease (but only if permitted in accordance with Article III, Section 5). Notwithstanding the foregoing, the Declarant and the agents and employees of each, shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain spot lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales and construction efforts; and (iv) use the parking facilities on the Sub-Association Common Area for parking for its employees and invitees.

Section 2. **Use of Accessory Structures**. No shack, barn, or other building, other than a Dwelling or Live/Work Unit, its garage and outbuildings incident to such use, shall be erected on a Lot. No structure of a temporary nature may be used temporarily or permanently as a residence or otherwise. Notwithstanding the foregoing, the Declarant may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of the Units and Live/Work Units.

Section 3. **Nuisances**. No noxious or offensive trade or activity shall be carried on upon any Lot or the Sub-Association Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Subdivision. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 4. **Animals**. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance within the Subdivision. The Board of Directors has the right to determine whether or not a particular animal is a nuisance and to require removal. No person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Sub-Association Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals except domesticated cats shall be on a leash when outside the Owner's Dwelling or Live/Work Unit. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot or the Sub-Association Common Area.

Section 5. **Signs**. Except as otherwise required by the City of Raleigh, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, one sign of not more than nine (9) square feet advertising the property for sale or rent, and signs of not more than nine (9) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, *provided that* such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such

election. No sign of any kind shall be displayed in or on the Sub-Association Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Sub-Association Common Area in connection with the development and sale of the Properties, and the Owner of a Live/Work Unit shall have the right to erect and maintain signs advertising the Home-Based Business operating in the Live/Work Unit in accordance with the restrictions set forth in Section 12(f) of this Article.

Section 6. **Parking**. The Declarant shall provide and the Association shall maintain at least the minimum number of parking spaces required by the City of Raleigh for the Subdivision. The Board of Directors of the Association shall have the right and authority (but shall not be obligated) to assign parking spaces to Owners on an equal, non-discriminatory basis. The Owner of each Lot shall provide the Association with the make, model, color and license plate number of each vehicle owned or normally driven by the Owner and his family, any person regularly residing with the Owner, and/or any lessee or sublessee of such Owner. There shall be a maximum of two (2) vehicles permitted per household for each Lot.

No Owner or a member of his family, lessee or sublessee or guest of an Owner shall: (i) park any vehicle on the street within or adjoining the Properties except in a designated paved parking space; (ii) park or keep on any Lot or street within or adjoining the Properties any abandoned, partly dismantled or inoperative vehicle or vehicle not having current registration and inspection stickers displayed; or (iii) park or keep on any Lot or any street within or adjoining the Properties any boat or boat trailer, utility or other trailer, recreational vehicle, motor home, camper, bus, truck in excess of one ton weight, commercial vehicle, truck or van, or anything else other than a vehicle normally intended for use as a private passenger vehicle. For the purpose of the preceding sentence, the term "keep" shall mean present for either a period of more than ten (10) consecutive hours or overnight, whichever is less.

The Board of Directors shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, and the cost of towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered or the Owner of the vehicle, as appropriate.

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 law, code, ordinance or regulation shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Properties.

Notwithstanding the above, any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

Section 7. Antennae and Roof Structures. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, a permitted antenna may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or approved screening); (iii) is integrated with the Dwelling or Live/Work Unit and surrounding landscape; and (iv) is approved by the Architectural Control Committee.

Section 8. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the Dwelling or Live/Work Unit in such a manner as not to be visible from the street on which the Dwelling or Live/Work Unit fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or any other unsightly items shall be allowed to remain on any Lot; *provided, however*, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

Section 9. Fines. The Board of Directors, in accordance with this Declaration and the Bylaws, shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and/or the rules and regulations hereafter promulgated by the Board pursuant thereto. Any monetary fine or penalty shall be deemed a limited special assessment against the Lot of the Owner against whom such fine or penalty is assessed.

Section 10. Master Declarations. The Subdivision is part of the Brier Creek development and comprises a portion of the Brier Creek Village Center, and the Lots within the Subdivision, and the Owners of such Lots, are subject to the Master Declarations. In the event of an inconsistency between any provision of this Declaration and the Master Declarations, the more restrictive provision shall control. However, notwithstanding the above, if the provisions of the Master Declarations are in conflict with the provisions of Article XII, then the provisions of Article XII shall control.

Section 11. Live/Work Units. Except as otherwise provided herein, the Live/Work Units shall be held, used and enjoyed subject to the following restrictions set forth in this Declaration. Additional use restrictions shall apply to Live/Work Units as specified in Section 12

below. The Board may adopt separate, fair and reasonable rules and regulations to apply solely to the Live/Work Units to take into account the unique aspects of the Live/Work Units.

(a) Permitted Uses. In addition to the residential uses authorized by Article X, Section 1 above, each Live/Work Unit may be used for "Home-Based Business" uses as described below (the "Live/Work Permitted Uses"). Generally, each Live/Work Unit shall be used as a residence for a single family and for home office ("Home Office") uses. Any Live/Work Unit may be used entirely for residential use, but no Live/Work Unit may be used entirely for nonresidential uses. Home-Based Businesses are permitted, provided that they take place entirely in the Live/Work Units, they are generally performed with one client at a time, and they are consistent with zoning ordinances and other governmental conditions of approval of the Properties, as such ordinances and conditions may be amended from time to time. The four types of Home-Based Businesses are defined as "Public Access Businesses," "Mobile Businesses," "Casual Public Access Businesses" and "Secluded Businesses." An acceptable business may fall into one or more of these categories. If a proposed business use is not clearly in one or more of these categories, then it is prohibited unless the Board approves such proposed use in writing. The following descriptions are not all-inclusive:

(1) ***Public Access Businesses.*** Public Access Businesses typically have frequent personal interaction with individuals which meet in Home Offices in the Live/Work Units. Examples, without limitation, of permitted Public Access Businesses are:

- Architect/Landscape Architect/Engineer/Land Planner
- Interior Decorator
- Photography Studio/Portraiture/Bridal Services
- Planning Consultant
- Attorney
- Income Tax Service/Accounting
- Estate Planner
- Consulting and Business Services
- Music Teacher
- Tutor
- Kitchen and Bath Designer
- Real Estate Developer/Specialty Contractor
- Dance Teacher

(2) ***Mobile Businesses.*** Mobile Businesses typically involve a significant time away from the Live/Work Unit where work is either acquired or performed away from the Live/Work Unit. Mobile Businesses may also involve services arising out of shipments or deliveries to the Home Office. There are basically two subcategories of Mobile Businesses. One subcategory is characterized by the fact that principal operations are conducted entirely away from the Home Office, and the Home Office is principally used for storage and management activities. This subcategory includes such activities as follows:

- Pick-up and Delivery Services
- Cleaning Services
- Pool Maintenance (provided no pool chemicals are stored on-site)

- Building Contracting (provided no construction materials or vehicles are stored on-site)
- Landscaping

The second sub category is characterized by the fact that much less of the principal operations are conducted away from the Home Office. This subcategory includes such activities as follows:

- Electronic/Computer Equipment Repair and Fix-it Services
- Catering Services
- Flower Arranging and Plant Services
- Specialty Food Products and Delivery
- Business Consulting

(3) ***Casual Public Access Businesses.*** This category typically involves occasional one-on-one interaction with individual client groups. Some meetings with clients will occur at the Home Office, and sporadic meetings with clients will occur away from the Home Office. Examples of this category of Home-Based Business include the following:

- Video Producer
- General Business Consultant
- Public Relations Consultant
- Copyrighter
- Photographer
- Artist

(4) ***Secluded Businesses.*** Functionally, this category takes place at the Home Office, and it involves few or no meetings with the public or with clients. Communication with clients typically takes place electronically. Examples of this category of Home-Based Business include the following:

- Internet or Web-oriented Business/Service Provider
- Secretary/Communication Service Provider
- Billing Service Provider
- Telecommuter

(5) ***Other Permitted Uses.*** Notwithstanding the specific examples of permitted uses outlined in Section 11(a)(1)-(4), and subject to the right (established in Section 11(b)(8) of this Article) of Declarant to prohibit a use, the Board may authorize other uses, using reasonable discretion, so long as such other uses do not detract from the overall image of the Subdivision, and are not otherwise precluded by law. The Board will consider the effect on Live/Work Units in the Subdivision, and the Board will not approve a use on a Live/Work Unit that has a materially adverse impact on any other Lot in the Subdivision. The Board may fairly and reasonably define the permitted uses, from time to time, more clearly than the guidelines outlined above. The Board may establish special rules and regulations to apply specifically to the Live/Work Units. Moreover, the Board may adopt rules and regulations establishing procedures allowing Owners and Persons under contract to purchase a Live/Work Unit in the Subdivision to apply to the Board for written authorization of a proposed business use.

(b) **Prohibited Uses**. Prohibited uses are those uses that are not compatible with the Live/Work Permitted Uses, as well as all uses which are contrary to any zoning ordinance or other governmental condition of approval for the Subdivision and uses which are disapproved by the Board.

Further, the following operations and uses shall not be permitted in any Live/Work Unit within the Properties:

(1) Churches, schools or political organizations.

(2) Retail or wholesale sales or manufacturing.

(3) Body piercing services.

(4) Kennels or other animal care facilities.

(5) Storage or refining of hazardous materials and petroleum or other products.

(6) Sales, repair or maintenance of vehicles, including automobiles, boats, motorcycles, aircraft, trucks or recreation vehicles, provided that light maintenance of commercial vehicles shall be allowed so long as such maintenance is conducted entirely within the interior of a garage on a Live/Work Unit.

(7) Any business that is primarily sexually-oriented, such as a business offering nude, or semi-nude entertainment, a massage parlor, escort service, adult theater, adult bookstore or similar businesses.

(8) Other uses (other than the Live/Work Permitted Uses) that Declarant or the Board reasonably determines would detract from the overall image of the Subdivision, or which might adversely affect the value of the Lots within the Subdivision. Declarant shall have the right to disapprove a proposed use until Declarant no longer owns any portion of the Subdivision.

(9) Any business or activity which is contrary to any governemental ordinance then in effect.

Section 12. Additional Use Restrictions For Live/ Work Units. In addition to complying with the Use Restrictions in this Article X, the Live/Work Units must also comply with the Use Restrictions in this Section 12. However, if there is a conflict between this Section 12 and any other provision of Article X, this Section 12 shall control.

(a) **Disabled Access Restriction**. If required by the Raleigh City Code, the Home-Based Business area of each Live/Work Unit must be accessible to wheelchairs and other vehicles for disabled and handicapped persons.

(b) **Lighting.** Unless initially installed by Declarant or otherwise authorized by the Declarant or the Board or an architectural committee in accordance with Article IX, all lighting shall be designed and located to reduce power consumption to its lowest practical level, to direct

light rays inward (toward the Live /Work Unit) to the extent practicable, to be compatible with the lighting on adjacent Units or Live/Work Units in the Properties and to be not unreasonably bothersome to other Lots in the Properties.

(c) **Loading Activities.** All loading and unloading activities shall be performed in the Live/Work Unit or in designated loading areas within the Properties. The Board in its reasonable discretion shall have the right to establish loading and unloading policies for the Live/Work Units.

(d) **Trash, Trash Receptacles and Storage Area.** Unless otherwise authorized the Declarant or the Board or an architectural committee in accordance with Article IX, trash, trash receptacles and storage areas for Live/Work Units shall be shielded from view by placement within a building or by enclosure with walls or fences architecturally compatible with building design.

(e) **External Effects**. Every Home-Based Business shall be operated (a) so that it does not cause emissions of any obnoxious or dangerous degree of heat, glare, noise, paint, dust or other airborne particulate, radiation, or fumes beyond any boundary line of the Live/Work Unit on which the Home-Based Business is located, and (b) so that ground vibration generated is not perceptible, without instruments, at any point on any boundary line of the Live/Work Unit on which the Home-Based Business is located. The Board, exercising reasonable business judgment, shall determine whether or not the foregoing restriction has or has not been violated. No materials or wastes shall be permitted on a Live/Work Unit in such form or manner as to permit its transfer off of a Live/Work Unit by natural causes or forces, and all materials or wastes which might cause fumes or dust or which might constitute a fire hazard or which might be edible by, or otherwise attractive to animals, rodents or insects, shall be stored only in closed containers or within an enclosed structure.

(f) **Signs**. In addition to the items authorized to be displayed by Article X, Section 5 above, each Live/Work Unit shall be entitled to display one or more signs advertising the Home-Based Business operating at the Live/Work Unit so long as (a) each such sign is of such color, size, shape and materials that have been approved by the Declarant or the Board or an architectural committee in accordance with Article IX, and (b) the type and number of such sign or signs is in conformance with all applicable governmental regulations.

(g) **Parking and Vehicular Restrictions.** Residents of Live/Work Units may not park in the Properties any vehicle that is use-specific to the business conducted in the Live/Work Unit or that is larger than a normal passenger vehicle unless the vehicle fits in the garage or on the driveway of the Live/Work Unit. No such vehicle shall be parked in any other part of the Properties, except while loading or unloading at a doorway or as is permitted by this section. Customers, invitees and guests of a Live/Work Unit Owner must park on the public rights of way fronting the Live/Work Unit or in the guest parking spaces that are designated for Live/Work Units (if any). Pick-up and delivery trucks may be parked temporarily on the public rights of way fronting the Live/Work Unit or in open Live/Work Unit guest parking spaces (if any), so long as they do not have signs or other forms of advertising on them. No parking may obstruct free traffic flow, constitute a nuisance, or otherwise create a safety hazard.

(h) **Hours of Operation.** Home-Based Businesses are allowed to serve customers on-site (a) between 7:00 a.m. to 7:00 p.m., Monday through Friday and on Saturday between 9:00 a.m. and 5:00 p.m., and (b) during additional hours approved by the Board.

(i) **Employees.** An Owner may employ (or contract with independent contractors for) up to two (2) part-time workers or contractors or one (1) full-time worker in the Home-Based Business in the Live/Work Unit. "Part-time" means no more than twenty (20) hours a week. However, there is no limitation on how many resident family members may work for the Home-Based Business.

(j) **Renting and Leasing**. No Owner may lease or sublease the Home-Based Business area of the Live/Work Unit.

ARTICLE XI

GENERAL PROVISIONS

Section 1. **Enforcement**. The Association and each Owner (including the Declarant) shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

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

Section 2. **Amendment**. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. During the Declarant Control Period, the Declarant may amend this Declaration, without the consent or joinder of the members or the Association, for any purpose except as such right is qualified by the last sentence in this section. This Declaration may also be amended during the first twenty five year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy five percent (75%) of the Lots. No amendment shall be effective unless it has been approved, if required by the provisions of Article XII or the Raleigh City Code, by the Raleigh City Attorney or his Deputy, and recorded in the office of the Register of Deeds of Wake County.

Section 3. **Subdivision of Lots**. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant during the Declarant Control Period, and thereafter by the Association, and, if required by the Raleigh City Code by the City of Raleigh. Subdivision or recombination of any Lot(s) may, as appropriate, increase or decrease the number of votes in the Association.

Section 4. **Rules and Regulations**. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Sub-Association Common Area and the Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the restrictive covenants and other use restrictions applicable to the Properties, in accordance with procedures set forth in this Declaration and the Bylaws, which sanctions may include, but are not limited to, monetary fines, which fines shall be deemed a limited special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Sub-Association Common Area; *provided, however*, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

In addition, pursuant to procedures provided in this Declaration and in the Bylaws, the Association may exercise self help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Sub-Association Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

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

Section 5. **Condemnation/Casualty**. If all or any part of the Sub-Association Common Area and improvements thereon is taken by power of eminent domain or is damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the members. Nothing in this Section shall

prevent the Board from proposing and the members from approving the use of such proceeds for construction of different improvements, e.g., playground on Sub-Association Common Area in lieu of a destroyed club house.

Section 6. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period that extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant.

Section 7. Evidence of Member Approval. In the event that any action requires evidence of consent of the members or a specified percentage of the members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF LENNOX AT BRIER CREEK HOMEOWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of LENNOX AT BRIER CREEK HOMEOWNERS ASSOCIATION, INC., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [described the action approved] was approved by at least _____ % of the Members as required by the Declaration and Bylaws of the Association.

_____
[President/Secretary]

Section 8. Number and Gender. Whenever the context requires, the singular shall included the plural, and vice versa, and one gender shall include all.

Section 9. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 10. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect and other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local laws, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 11. Conflicts. In the event of a conflict between any provision of this Declaration and the Master Declarations, the more restrictive provision shall control. In the event of a conflict between this Declaration and the Articles of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control. Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter 55A), and the Raleigh City Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Raleigh City Code.

Section 12. Rule Against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant to thereto and §47F-3-102(1) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

ARTICLE XII
RALEIGH CITY CODE REQUIREMENTS

PART A
DEFINITIONS AND GENERAL REQUIREMENTS

Section 1. Definitions. As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in

Section 3 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

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

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

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

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

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

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

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

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

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

(2) Stormwater Control Measures;

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

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

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

(6) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public Maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorneys' fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and

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

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

for the benefit of fewer than all of the Owners and occupants of the applicable portion of the Properties is Sub-Association Limited Common Area, and such Sub-Association Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Sub-Association Limited Common Area exists are subject to the same Code provisions as those applicable to Sub-Association Common Area. All references herein or in any recorded plat of the Properties to Limited Common Area or Sub-Association Limited Common Area that is, in fact, Common Area or Sub-Association Common Area, are deemed corrected accordingly.

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

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

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

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

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

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

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

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

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

(9) Allocations to reserve funds;

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

(11) Fees for services engaged by the Association;

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

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

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

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

(16) Expenses or assessments levied against the Properties by the Master Association;

(17) Leasing expenses for any streetlights within the Properties; and

(18) Expenses to maintain the areas with or surrounding City transit easements.

(j) "Declarant" is defined as **STANDARD PACIFIC OF THE CAROLINAS, LLC**, a Delaware limited liability company, its successors and assigns.

(k) "Declarant Annexation Date" is defined as the last date and time on which the Declarant has the right to annex real property to this Declaration without the consent or joinder of any Person other than the City, which date is 5:00 p.m. on December 31, 2017 (or, if no date is entered in the blank space, is 5:00 p.m. on the date that is seven (7) years following the date of the recording of this Declaration). The timeliness of an Annexation Declaration is determined by the date of its recordation as stamped by the Registry notwithstanding its date of execution.

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

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

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

(o) "Governing Documents" is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents

(with respect to those portions of the Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

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

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

(r) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-of-way; Common Area; Open Space owned in fee simple by the Association; greenway or park lands owned in fee simple by the City.

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

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

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

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

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

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

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

(z) "Properties" is defined as all of the real property subject to any part or all of the terms of this Declaration. The amount of acreage of the Properties at the time of the recording of this Declaration is approximately 49.53 acres.

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

Section 2. Applicability. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

Section 3. Conflicts.

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

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Provided, however, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that

required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

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

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

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

Section 5. Assessments.

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

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

(b) Purpose of Assessments. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that

Fiscal Year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

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

Notwithstanding the foregoing, for calendar year 2007, the Maximum Annual Assessment shall be $155.00 per month or $1,860.00 per year for each Class A Lot. The Maximum Annual Assessment for Class B Lots shall be zero during the Declarant Control Period in which the Declarant is obligated to fund the Operating Deficit as set forth in Section 5(f) of Part A of Article XII and thereafter the Maximum Annual Assessment for Class B Lots shall be equal to the Stormwater Assessment then applicable to such Class B Lots. The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

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

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

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

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorneys' fees, shall be charge on the Owner's Lot as provided in G.S. 47F-3-116 of the Act and, upon filing

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

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

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

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

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

(g) Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether

the assessments and other charges against a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

Section 6. Membership and Governance.

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

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

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

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

(e) Quorum. Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in

person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 7. **Permanently Protected Undisturbed Open Space Areas**. Within any permanently protected undisturbed open space areas shown on any recorded plat of the Properties, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code), any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse permit from the City. Permanently Protected Undisturbed Open Space may or may not be Open Space as defined in this Declaration.

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

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

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

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

Section 12. **Sight Triangles**. No sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet and eight feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area designated on a recorded map of the Properties as a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

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

(a) the Annexed Property is contiguous to the Properties or directly across a street from the Properties;

(b) any development of the Annexed Property is first approved by the City;

(c) annexation of such Annexed Property meets any other applicable requirements of this Declaration; and

(d) contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation Declaration shall be recorded in the Registry.

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

Annexed Property is subject to all Code and Declaration provisions relating to Open Space. Each Annexation Declaration shall state the amount of the Stormwater Assessment for Lots in the annexed Property when required by Part B, Section 6 of this Article.

Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Declaration in the Registry or such later date as specified in the Annexation Declaration, and the Annexed Property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Annexation Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration and other Governing Documents of the Association. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance with the terms of this Declaration, the Annexation Declaration, other Governing Documents, the Code, and the Stormwater Agreement, as applicable. The Association shall have the duties, responsibilities and powers set forth in this Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this Declaration or any Annexation Declaration, the Properties, including the Annexed Property, shall be managed and governed by the Association as an entirety.

Assessments for Common Expenses collected from Owners in the Annexed Property may be expended by the Association for Common Expenses anywhere in the Properties without regard to the particular phase, area or subdivision from which such assessments came.

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

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

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

dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Properties.

Section 17. **Private Utility Lines**. Any water or sewer line within the boundaries of the Properties that serves more than one Lot and which is either located outside of any public street right-of-way or outside of any City utility easement shall be owned and Maintained by the Association as a Sub-Association Common Area. In no case shall the City or the State of North Carolina be responsible for Maintaining any such private utility line or be responsible for the consequences for any blockage, backflow, break or leak in said utility line. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lots within the Properties. Accordingly, the City shall not be responsible for failing to provide regular or emergency utility services to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or their occupants when such failure is due to inadequate design or construction, blockage, backflow, leakage, inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the Owners or occupants of the Properties.

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

Section 18. **Landscape Easements**. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one-hundred and eighty (180) days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

PART B
STORMWATER

(CODE SECTIONS 10-5007 and 10-9027)

Section 1. **Stormwater Control Measures**. The Code requires that stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the Code, Stormwater Control Measures will be installed by the Declarant and Maintained by the Association as Common Area or Limited Common Area (or by a

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

Section 2. Creation of Stormwater Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who maybe designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2007, the Stormwater Assessment is $148.00 per Lot, consisting of $71.00 for the payment to the General Replacement Account held by the City for the Stormwater Control Measures in Phase 1 of the Subdivision, and $77.00 for annual inspections and maintenance, liability insurance, and sediment removal, all as set forth in the Lennox at Brier Creek Stormwater Management Operations and Maintenance Manual and Budget for the Subdivision, recorded, or to be recorded, in the Registry as Exhibit C to the Stormwater Agreement. Stormwater Assessments shall commence with respect to each Lot on the later of the date on which this Declaration or applicable Annexation Declaration is recorded or the date on which a plat is recorded establishing the Lot. The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and Maintenance budget for the Stormwater Control Measures as set forth in the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, and any replacement contribution payment owed to the City pursuant to the Stormwater Agreement. The Association shall honor its obligations under the Stormwater Agreement, and the Association shall assess the Stormwater Assessment. The Declarant and each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association. No vote of the Owners is required to levy, collect, or foreclose a Stormwater Assessment. Stormwater Assessments shall be paid to the Association at the same time annual assessments are due.

In the event of nonpayment of any Stormwater Assessment for a period of thirty (30) days or longer after the payment due date, such Stormwater Assessment, together with interest at a rate not to exceed the highest rate allowed by North Carolina law), as computed from the date the delinquency first occurs, late charges, and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the land upon the filing of a claim of lien, in the manner provided in G.S.47F-3-116(g), in the office of Clerk of Superior Court in the County in which the Lot is located and shall be a continuing lien upon each Lot against which the assessment is made until paid in full. The lien may be foreclosed in accordance with North Carolina law, or in any

other manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Stormwater Assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. In such instances, such unpaid assessments shall be deemed Common Expenses collectible from all Owners, including the new Owner.

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

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

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

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

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

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

Section 4. Assignment of Collection Rights and Lien Rights the City. Pursuant to the Stormwater Agreement and G.S.47F-3-102(15) of the Act, the Association has assigned to the City its rights to collect Stormwater Assessments, its rights to file liens against the Lots, and the right to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement. The Association shall have a license to collect Stormwater Assessments, to file liens against the Lots, and to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement until such time as the City notifies the Association in writing that it has elected to exercise its right to collect Stormwater Assessments, to file liens against the Lots, and/or to foreclose on those liens for monies owned by the Association to the City pursuant to the Stormwater Agreement. Declarant hereby irrevocably authorizes and directs each Owner to rely upon any written notice sent to such Owner by the Association that the City

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

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

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

In connection with the recording of an Annexation Declaration, either a new Stormwater Agreement and/or an amendment to an existing Stormwater Agreement (as determined by the City) shall be entered into among the City, Declarant, and Association to address the Stormwater Control Measures of the Annexed Property. Except in those instances where the Stormwater Agreement already contains contribution payments for the Annexed Property, the Annexation Declaration shall establish an new Stormwater Assessment for the Lots in the Annexed Property with respect to all new Stormwater Control Measures located in or serving such Annexed Property, and such new Stormwater Control Measures shall be designated as Common Area or Limited Common Area, as appropriate, on the recorded plat(s) of the Annexed Property. The new Stormwater Assessment shall be sufficient to Maintain the new or additional Stormwater Control Measures in or serving the Annexed Property and to pay the applicable replacement contribution payments to the City under the new or amended Stormwater Agreement, and such Stormwater Assessment shall be assessed against the Owners of the Lots of the Annexed Property and Owners of the existing or future Lots served by the same Stormwater Control Measures.

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

(a) a perpetual, irrevocable and nonexclusive easement, right and privilege to discharge and store surface water drainage from such Lot or Common Area into the Stormwater Control Measures situated in private drainage easements that serve the Properties, whether located on or off or the Properties, and

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

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

Section 9. **Relocation of Drainage Easements**. Drainage easements situated on the Properties may be relocated only by a written agreement signed by the Association - upon approval of the Board of Directors without vote of the Members - and by the Owners of all portions of the Properties on which the drainage easement then is located, and by the Owners of all portions of the Properties on which the drainage easement is to be relocated. The consent of tenants and Mortgagees of the affected Lots shall not be required for the relocation to be effective. All relocations of a drainage easement shall be accompanied with a letter sealed by a professional engineer licensed in the State of North Carolina stating that the relocated drainage easement will not cause any adverse stormwater runoff unto adjoining properties.

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

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

PART C
TOWNHOUSE DEVELOPMENT

(CODE SECTIONS 10-2109, 10-3072 AND 10-3073)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring

Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

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

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

PART D
PRIVATE STREETS

(CODE SECTION 10-3074)

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

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

(b) In no case shall the City or the State of North Carolina be responsible for Maintaining any private street. Such responsibility shall rest with the Association (or applicable

Sub-Association) and Owners of Lot within the Properties, in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

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

[The remainder of this page is intentionally blank. Signatures follow on the next page.]

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized officer as of the date set forth in the notary acknowledgment below.

DECLARANT:

STANDARD PACIFIC OF THE CAROLINAS, LLC, a Delaware limited liability company

By: _____
Name: D. Keith Wood
Title: President

Wake County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: D. Keith Wood

Date: July 16, 2007

My Commission Expires:

11-05-2011

[Affix Notary Stamp or Seal]

Allison Greenhut
Notary Public
Print Name: Allison Greenhut

ALLISON GREENHUT
NOTARY PUBLIC
WAKE COUNTY, STATE OF NORTH CAROLINA
MY COMM. EXP. 11-5-2011

In Witness Whereof, the Association has caused this instrument to be executed in its name by its duly authorized officer as of the date set forth in the notary block below for the limited purpose of accepting the assignment of Declarant's rights as an "Owner" under the Master Declarations and assuming the obligations of the Declarant as "Owner" under the Master Declarations and Master Associations.

ASSOCIATION:

LENNOX AT BRIER CREEK HOMEOWNERS ASSOCIATION, INC.

By: _____
Name: Gray B. Methven
Title: President

Wake County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Gray B. Methven

Date: July 16, 2007

My Commission Expires:

11-05-2011

Allison Greenhut
Notary Public
Print Name: Allison Greenhut

[Affix Notary Stamp or Seal]

ALLISON GREENHUT
NOTARY PUBLIC
WAKE COUNTY, STATE OF NORTH CAROLINA
MY COMM. EXP. 11-5-2011

EXHIBIT A

Lying and being in the City of Raleigh, Wake County, North Carolina, and being more particularly described as follows:

BEING all of those certain tracts or parcels of land designated as Lot 1000, containing 34.2406 acres, and Lot 1001, containing 15.2890 acres, as shown in Book of Maps 2007, Page 818, Wake County Registry

BK012655PG01747

BOOK:012655 PAGE:01690 - 01747

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

WAKE COUNTY NORTH CAROLINA

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

This Customer Group
_____ # of Time Stamps Needed

This Document
58 New Time Stamp
_____ # of Pages

22.004-1/20/06