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WAKE COUNTY, NC 520
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
08/25/2010 AT 16:43:56

BOOK:014048 PAGE:02067 - 02105

**DECLARATION OF
EASEMENTS, CHARGES AND LIENS
FOR
COVENANTS, CONDITIONS, RESTRICTIONS,
SILVER LAKE BLUFFS**

**THIS DOCUMENT REGULATES
THE DISPLAY OF POLITICAL SIGNS.**

Drawn by and HOLD FOR: Moore & Alphin, PLLC (Box 155)(rm)

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SILVER LAKE BLUFFS**

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS FOR
SILVER LAKE BLUFFS**

THIS DECLARATION is made on the date hereinafter set forth by **M/I HOMES OF RALEIGH, LLC**, a Delaware limited liability company (hereinafter "Declarant"),

PREAMBLE:

WHEREAS, by virtue of deeds recorded in Book 13692, Page 2582, Book 13692, Page 2590, and Book 13292, Page 2597, Wake County Registry, Declarant is the owner in fee simple of approximately 23.86 acres of land located on Tryon Road in the City of Raleigh, Swift Creek Township, Wake County, North Carolina, which Declarant is developing into a residential townhome community to be known as **SILVER LAKE BLUFFS** (the "Subdivision");

WHEREAS, the Subdivision is part of a planned community known as Silver Lake, and Owners of Lots within the Subdivision are also Members of the Master Association; and

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

WHEREAS, Declarant has incorporated under North Carolina law as a nonprofit corporation, the Silver Lake Bluffs Association, Inc., which is a Sub-Association of the Master Association, to own, maintain and administer the Townhome Common Area, to maintain the exterior of the Units, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created.

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

**ARTICLE I
DEFINITIONS**

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

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Section 1. "Act" shall mean and refer to 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. 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" [N.C.G.S. §47F-1-103(28)]) shall have the definition contained in the Act.

Section 2. "Annexation Declaration" shall mean and refer to 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.

Section 3. "Annexed Property" shall mean and refer to all real property annexed or subjected (those two terms being used interchangeably herein) to all or any part of the terms of this Declaration after the initial recording of this Declaration in the Registry.

Section 4. "Association" shall mean and refer to **SILVER LAKE BLUFFS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 5. "Board of Directors" and "Board" shall mean and refer to 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.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 7. "City" or "City of Raleigh" shall mean and refer to the City of Raleigh, North Carolina, a North Carolina municipal corporation.

Section 8. "Code" shall mean and refer to 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.

Section 9. "Declarant" shall mean and refer to **M/I Homes of Raleigh, LLC**, a Delaware limited liability company. 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 Registry.

Section 10. "Declarant Annexation Date" shall mean and refer to the last date 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 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.

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Section 11. "Declarant Control Period" shall mean and refer to the period of Declarant control of the Association, as provided in §47F-3-103(d) of the Act, and including, without limitation, time period in which Declarant, by itself, has sufficient voting power to elect members of the Board). The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2017;
- (b) Not later than six months after the date on which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member (at the 9-to-1 ratio provided in Section 2(b) of Article III hereof); *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 9-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 §47F-3-104 of the Act.

Section 12. "Declaration" shall mean and refer to this "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Silver Lake Bluffs", and all amendments thereto and supplements thereof.

Section 13. "Fiscal Year" shall mean and refer to the calendar year, unless and until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

Section 14. "Governing Documents" shall mean and refer to all of the following: this Declaration, the Articles of Incorporation and Bylaws of the Association, architectural guidelines and bulletins, rules and regulations of the Association, Annexation Declarations, and any other declarations of restrictive or protective covenants applicable to the Properties, as the same may be amended, restated or supplemented from time to time.

Section 15. "Governmental Entity" shall mean and refer to the City, the County of Wake, 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.

Section 16. "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 Subdivision (regardless of whether the Lot has been subjected to this Declaration as provided in Article II hereof), with the exception of any Townhome Common Area, Sub-Association Common Area (S.A.C. A.) and Open Space owned in fee by the Association, Common Area, Master Association Common Area (M.A.C.A.) and Open Space owned in fee by the Master Association, publicly-dedicated street rights-of-way, and greenway or park lands owned in fee simple by the City, as shown on such

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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.

Section 17. "Master Association" shall mean and refer to the Silver Lake Master Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 18. "Master Declaration" shall mean and refer to the "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Silver Lake", recorded in Book 13043, Page 2443, Wake County Registry, and including all amendments thereto and supplements thereof.

Section 19. "Member" shall mean and refer to every Person who or which holds membership in the Association

Section 20. "Open Space" shall mean and refer to any and all open space areas shown on preliminary subdivision plans filed with the City and delineated as such on any recorded map of the Properties, and all 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.

Section 21. "Operating Deficit" shall mean and refer to the negative difference (if any) 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 Townhome Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot but which are not paid, (ii) special assessments, and (iii) individual special assessments.

Section 22. "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot, including contract sellers and owners of an equity of redemption, but excluding any Person having an interest in a Lot solely as a tenant or as security for the performance of an obligation.

Section 23. "Person" shall mean and refer to a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the City), and any other entity.

Section 24. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any Annexed Property subsequently subject to this Declaration pursuant to said Article II.

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Section 25. "Registry" shall mean and refer to as the Office of the Register of Deeds (or any successor office under applicable law) for Wake County, North Carolina, 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.

Section 26. "Stormwater Agreement" shall mean and refer to any agreement recorded in the Registry among the Declarant, the Association, and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to same, and including, without limitation, the Stormwater Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution (Silver Lake, Phase 1) recorded in Book 13043, Page 2503 in the Registry and the First Amendment to Stormwater Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution (Silver Lake, Silver Lake Bluffs) recorded in Book 14048, Page 2045 in the Registry.

Section 27. "Stormwater Control Facilities" or "Stormwater Control Measures" (such terms being used interchangeably herein and in the Stormwater Agreement), shall mean and refer to one or more of the following devices and measures, together with associated private storm water drainage easements (however identified on a recorded map or in a document) that serve the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet detention basins, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and any other devices and measures necessary to collect, convey, store, and control storm water runoff and pollutants for more than one Lot in the Properties, and which are located outside public street rights-of-way and City drainage easements. Private storm water drainage easements that serve more than one Lot within the Properties, however identified on a recorded map or in a recorded document, are deemed to be dedicated to the Association or to the Master Association for the benefit of the Properties or the applicable portion thereof. All Stormwater Control Measures are Townhome Common Area or Townhome Limited Common Area or, if owned by the Master Association, Common Area or Limited Common Area, as applicable. The property identified on the recorded maps as "125 M.A.C.A. & Private Drainage Easement" is Master Association Common Area and the Stormwater Control Measures located therein shall be maintained by the Master Association.

Section 28. "Stormwater Manual" shall mean and refer to that certain Stormwater Operations And Maintenance Manual And Budget For Silver Lake Bluffs, prepared by Bass, Nixon & Kennedy, Inc., which is attached to and incorporated into the Stormwater Agreement as an exhibit for the maintenance of Stormwater Control Measures and the payment of the costs thereof.

Section 29. "Townhome Common Area" shall mean and refer to the real property, together with any improvements thereon, owned (in fee or by easement or other right of use) or leased by the Association and intended for the common use and benefit of the Owners and occupants of the Properties, however such real property is described on a map or document recorded in the Registry. Townhome 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 storm water drainage easement located on either a Lot or

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real property that is not part of the Properties and that serves more than one 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). Townhome Common Area may include all of the following:

(a) any private street (including associated storm drainage facilities) and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);

(b) 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;

(c) any site or facility designated a common area, sub-association common area or "S.A.C.A.", common property open space, open space common area, amenity area, or other similar designation on any recorded map of the Properties or in this Declaration, unless owned by the Master Association;

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

(e) 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.

Townhome 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 Association, or another sub-association as set forth herein.

All real property, private streets, private utility lines, and other improvements within the Subdivision owned by, or under the jurisdiction of, the Master Association are Common Area as defined in the Article I of the Master Declaration and are not Townhome Common Area.

Common Area that is owned by or subject to being maintained by the Association is Townhome Common Area, even if it is referred to in this Declaration or in any recorded map of the Properties as Common Area instead of Townhome Common Area.

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

Section 30. "Townhome Common Area Easement" shall mean and refer to Townhome Common Area as to which the Association has only an easement interest, and not a fee simple interest.

Section 31. "Townhome Common Expense" shall mean and refer to 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,

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all of the following: (Expenses for the maintenance of Townhome Limited Common Area are "Townhome Limited Common Expenses", which is a subcategory of Common Expense):

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses of the Townhome Common Area and administration, inspection and maintenance of the Townhome Common Area;
- (c) Expenses classified as Townhome Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;
- (d) 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;
- (e) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (f) Ad valorem taxes and public assessments and charges lawfully levied against any Townhome Common Area owned in fee simple by the Association;
- (g) Fees or charges for utilities used in connection with the Townhome Common Area;
- (h) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (i) Allocations to reserve funds;
- (j) Payments owed to the City pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant;
- (k) Fees for professional and other services engaged by the Association;
- (l) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity;
- (m) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (n) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and
- (o) Expenses agreed by the Members to be Townhome Common Expenses of the Association.

Section 32. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which 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.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF THE
SILVER LAKE BLUFFS ASSOCIATION, INC.**

Section 1. Existing Property. The real property which, 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.

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Section 2. Additions to Existing Property by Declarant. At any time during the Declarant Annexation Period, additional lands within the area described on **Exhibit B** attached hereto may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a map showing such property to be annexed and recording by Declarant of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subjected to this Declaration (or separated from such property only by the right-of-way of a street or road) and further provided that such annexation must be approved by the City of Raleigh and, if required, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Automatic Addition to Existing Property. If not sooner subjected to this Declaration as provided in Section 2 above, Lots and other property identified on **Exhibit B** shall automatically be subjected to this Declaration, without the necessity of recording a supplementary declaration, upon the earlier of the following to occur:

- (a) the later of: (i) the date that is five (5) years after the date on which preliminary subdivision approval for the Subdivision was given by the City of Raleigh, or (ii) any extension of such date granted by the City pursuant to the provisions of §10-3013(c)(4) of the Raleigh City Code or any successor Code provision; or
- (b) as to a Lot, by and upon sale of the Lot to any Person other than the Declarant.

Section 4. Conveyance of Townhome Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner other than Declarant, the owner of the annexed property shall convey to the Association all Townhome Common Area located within the newly annexed property. Title to such Townhome Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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 which is subject to assessment. The foregoing is not intended to include Persons who or 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

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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 nine (9) votes for each Lot that it owns (each such Lot being a "Class B Lot"). 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. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members or announced at the beginning of such meeting.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters, or if any Dwelling within the Properties is leased for rental purposes to tenants, 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 and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant.

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 Townhome Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

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

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Townhome 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 Townhome Common Area providing access or utilities to his Lot.

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(c) the right of the Association to dedicate or transfer all or any part of the Townhome 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, utility and drainage facilities upon, over, under and across the Townhome 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 Townhome 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 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 its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Townhome Common Area for other property and consideration of like value and utility provided that:

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

(ii) after the notice is given, those Members having the minimum percentage of votes in the Association required by the Act gives written approval of the exchange, provided, however, that Member approval is not required if the sole purpose of the exchange is to correct an encroachment;

(iii) the acreage and configuration of the remaining Townhome Common Area (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and

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

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 Unit, or a portion thereof, as their principal residence in Wake County, North Carolina.

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

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision, Declarant will convey to the Association title to those portions of the Townhome Common Area in such phase to be owned in fee 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 assigns, an easement over, under, across and through the Townhome Common Area so long as Declarant owns any Lot within the Properties or any of the property described in **Exhibit B** to this Declaration, for the purpose of constructing any improvements on the Townhome Common Area and/or the Lots as it or they deem necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, the Master Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded maps of the Subdivision, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Townhome Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Master Association, the City of Raleigh or other Governmental Entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Townhome Common Area and Townhome Common Area Easements. It is the intent of Declarant that the Townhome 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, by recording any plat or map of any phase or section of the Subdivision, Declarant grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Townhome 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 Townhome Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Townhome Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other Person shall, without the prior written consent of the Association: (i) remove any trees or vegetation from Townhome Common Area; (ii) erect gates, fences, buildings or other structures on any Townhome Common Area; (iii) place any garbage receptacles on or in any Townhome Common Area; (iv) fill or excavate any Townhome Common Area or any part thereof; or (v) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Townhome Common Area.

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

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Townhome Common Area (including each Townhome Common Area Easement) is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Townhome Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or rules and regulations adopted by the Association as provided herein or in the Bylaws; (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 Townhome Common Area Easement lies, resulting from use of the Townhome Common Area; and (iii) pay all property taxes and other assessments levied against all Townhome Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance of Townhome 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 Townhome Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Townhome Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Personal 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 or which 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 required to be paid by any Stormwater Agreement; (4) special assessments and individual special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents, and assessments levied against Owners for misuse and damage to the Townhome Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual special assessments for any expense which the Association becomes obligated to pay and pays on behalf of an Owner; (7) late payment charges, interest on unpaid assessments, costs of

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collection (including, without limitation, court costs, service charges, and attorneys' fees, 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 has the right at all times to include as part of the assessments or other charges applicable to the Lots and the Owners thereof such amounts as are required to pay all Townhome 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.

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 Townhome Common Area; (ii) maintenance, repair and reconstruction of the Townhome Common Area and improvements thereon, including, without limitation, storm water drainage facilities, and, 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 as provided in Article VI hereof; (iv) payment of taxes and public assessments levied against Townhome Common Area owned by the Association in fee; (v) procurement of insurance; (vi) employment of attorneys, accountants and other Persons for Association business; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Annual assessments do not include Master Association dues and assessments, which must be paid in addition to Townhome dues and assessments.

Section 3. Maximum Annual Assessment. Until December 31, 2010, the Maximum Annual Assessment shall be \$900.00 for each Class A Lot. The Maximum Annual Assessment for Class B Lots shall be zero. The "Maximum Annual Assessment" for each subsequent Fiscal Year shall increase by ten percent (10%) over the Maximum Annual Assessment for the immediately preceding Fiscal Year.

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 as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

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 Fiscal Year. The annual assessment for Class B Lots shall be zero, 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 Fiscal Year. Annual assessments shall be fixed at a uniform rate for all Lots in each Class

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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 Townhome 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. 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, 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 Board of Directors shall notify each Member of the annual assessment to be assessed against his Lot not later than twenty (10) days before the beginning of the Fiscal Year.

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.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may at any time levy special assessments against the Lots (or, as to expenses related to Townhome Limited Common Area, the Lots benefitted by such expenses) 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 Townhome Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expenses, *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 (or, as to a special assessment related to Townhome Limited Common Area, of Class A Members against whose Lot the special assessment will be levied) 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.

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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 their 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 (2) of the required quorum at the preceding meeting.

Section 6. Individual Special Assessments. The Board may levy special assessments against the Lot of an Owner ("individual special assessments"): (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damage to the Townhome Common Area or improvements thereon caused by the act or failure to act of an Owner, his family, tenants, guests or agents, and not the result of ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against an Owner resulting from failure to comply with the terms and provisions of this Declaration, the Bylaws, and/or any rules or regulations promulgated hereunder, including, without limitation, penalties assessed pursuant to the architectural design guidelines (if any), reimbursement to the Board of Directors or the architectural committee appointed by the Board for any sums it expends for enforcement of the architectural design guidelines and/or this Declaration and/or the rules and regulations of the Association; and (iii) for the purpose of reimbursing the Association for costs (including attorneys' fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws, the architectural design guidelines or other rules and regulations adopted by the Board or the Association. Declarant shall not be obligated to pay any special individual assessment except with Declarant's prior written approval. The due date of any special individual assessment levied pursuant to this Section shall be fixed in the Board resolution authorizing such assessment. Upon the establishment of a special individual assessment, the Board shall send written notice of the amount and due date of such special individual assessment to the affected Owner(s) at least thirty (30) days prior to the date such special individual assessment is due.

Section 7. Effect of Nonpayment of Assessments; Remedies. 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, interests, and the costs of collection thereof, including attorneys' fees, shall be charge on the Owner's Lot as provided in §47F-3-116 of the Act and, upon filing of a claim of lien in the Office of the Clerk of Superior Court for Wake County in the manner provided in §47F-3-116(g) of the Act, 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.

Each assessment and other charges due hereunder, 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 an 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

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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.

Notwithstanding the foregoing, when the holder of a first mortgage or first deed of trust of record or other purchase of a Lot 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.

Section 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of 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 9. Exempt Property. All Townhome 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 shall be exempt from said assessments.

Section 10. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum equal to one-sixth (1/6) 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 11. Declarant's Obligation to Fund Operating Deficits. 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 providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Townhome 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.

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

ARTICLE VI MAINTENANCE OF LOTS AND UNITS

Section 1. Association's Responsibility. In addition to maintenance of the Townhome 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 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 landscaping).

The Association shall also be responsible for certain exterior maintenance of the 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), roofs, gutters and down spouts, sidewalks, stoops, and parking areas. 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 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 such Owner's tenants, subtenants, or family members, or the guests or invitees 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 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 erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to

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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 15 calendar days from the date of the notice, in which the Owner is required 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 individual 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, except that the Association shall not be required to provide the financial statement for the preceding Fiscal Year if said Fiscal Year expired less than 75 days prior to the date of the request.

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

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.
- (d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing it mortgage.

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

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

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Governmental Entity or to a nonprofit entity organized for purposes similar to those of the Association.

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

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

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Townhome Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Association.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Townhome 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 making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. 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, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Townhome 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, 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, bushes or shrubbery, make any grading of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such

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action has been completed, the Person taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The Person 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 which contributes to the lateral and/or vertical support of any adjoining Unit(s) shall be burdened with an easement of support for the benefit of such adjoining Unit(s).

Section 3. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Townhome 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 Townhome Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Townhome 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 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 Townhome Common Area. A perpetual, nonexclusive easement over, under and through the Townhome 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 Townhome Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Townhome Common Area is subject to the easements granted herein.

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

Section 6. Easements for Governmental Access. An easement is hereby established over the Townhome Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

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Section 7. Easements for Private Contractors. The Association shall have the right to assign its rights and delegate its duties to any Person. In the event that the Association employs or engages any Person to provide security within the Properties, perform inspections of improvements, collect garbage, or perform any other function, an easement is established over the Townhome Common Area and every Lot for the benefit of such contractors for such purposes.

ARTICLE IX PARTY WALLS

Section 1. General Rules of Law to Apply. The general rules of law regarding party walls, lateral support, and liability for property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction of the Dwellings within the Subdivision and which is placed on the dividing line between Lots, and to all reconstruction or extensions of such walls, to the extent not inconsistent with the provisions of this Article.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who or which uses the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner and the Townhome Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Townhome Common Area to as nearly the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act or omission, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

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Section 7. Certification by Adjoining Property Owner That No Contribution Is Due.

If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge; provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration.

Any dispute arising under the provisions of this Article shall be resolved by binding arbitration. Each party to the dispute shall choose one person as an arbitrator and the arbitrators so chosen shall select an additional arbitrator, and the dispute shall be resolved by the decision of a majority of the arbitrators.

**ARTICLE X
ARCHITECTURAL CONTROL**

Architectural review and approval of any improvement to be constructed or installed on any Lot or the Townhome Common Area and any change or modification of any such improvement shall be done in accordance with Article X of the Master Declaration.

**ARTICLE XI
USE RESTRICTIONS**

Section 1. Use of Lots and Townhome Common Area. It is the intent of the Declarant that all Lots shall be used for residential purposes only. Except as permitted by the Code, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that (a) Declarant, real estate brokers, Owners and their agents may show Lots for sale or lease, and (b) an occupant of a Unit may conduct business activities within the Unit so long as: (i) the occupant obtains all necessary governmental licenses and approvals (including, without limitation, a special use permit, if required) for the conduct of such business in the Unit and is otherwise owned and operated in compliance with all applicable except laws and regulations; (ii) the existence and operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit (and, in particular, no sign advertising or otherwise acknowledging the business is permitted); (iii) the business activity does not involve door-to-door solicitation of residents; (iv) the business activity does not a nuisance, a hazardous or offensive use, or a threat to the security or safety of others; and (v) the business activity does not, in the sole and exclusive discretion of the Board, generate a level of vehicular or pedestrian traffic or the movement or parking of a number of vehicles beyond that of a Unit in which no business is operated. The foregoing shall not preclude occasional garage or yard sales, moving sales, or similar activities, provided that such activities may not be held on any one Lot more than once in any three-month period and, when held, may not exceed two days in duration. Notwithstanding the foregoing, the Declarant, and its employees, agents, contractors and subcontractors, shall have the right, subject to the Code, 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 7 days per week for such hours as the Declarant deems appropriate or necessary; (iii)

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conduct any other activities on Lots to benefit sales and construction efforts; and (iv) use the parking facilities on the 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, its garage and outbuildings incident to residential use, shall be erected on a Lot, and no portable storage units, sometimes known as PODS, may be placed on any Lot or the Townhome Common Area. No structure of a temporary nature may be used temporarily or permanently as a residence. Notwithstanding the foregoing, the Declarant may use PODS, and other temporary buildings, offices or facilities in connection with the marketing, sale and construction of Units.

Section 3. Nuisances. No noxious, illegal, or offensive trade or activity shall be carried on upon any Lot or the Townhome Common Area, nor shall anything be done thereon (including, without limitation, any activity generating loud noises or noxious or offensive odors) which may be or become an annoyance or nuisance to the neighborhood. 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 to the neighborhood. 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 Townhome Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. 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 Townhome 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 six (6) square feet advertising the property for sale or rent, and signs of not more than six (6) 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 (45) days before such election and shall be removed within seven (7) days after such election. No sign of any kind shall be displayed in or on the Townhome Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall each have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Townhome Common Area in connection with the development and sale of the Properties.

Section 6. Parking. All streets within the Subdivision are private streets. Parking of vehicles on private streets within the Subdivision is expressly prohibited, and any Owner shall be subject to fine by the Association if such Owner, or a member of his family, or other occupant of the Owner's Unit, or any guest or invitee of any of the foregoing, violates such prohibition.

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Furthermore, the Association shall be entitled to have any vehicle parked in violation of this provision towed at the expense of the owner of the vehicle.

The Association shall provide and 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 other occupant of the Lot of such Owner.

No Owner or a member of his family, lessee or sublessee or guest of an Owner shall: (i) park on any Lot any abandoned, partly dismantled or inoperative vehicle or vehicle not having current registration and inspection stickers displayed; or (ii) park on any Lot 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.

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 legal requirements 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.

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.

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To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear of the Unit constructed on the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is integrated with the Dwelling and surrounding landscape; and (iv) is approved pursuant to Article X of the Master Declaration.

Section 8. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the Unit in such a manner as not to be visible from the street upon which the 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. Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall or portable air conditioning units are permitted. No air conditioning or heating apparatus, unit or equipment may installed on the ground in front of, or attached to, the front wall of any Unit.

Section 10. Fences. Any fence or wall installed within the Subdivision must meet all requirements of the Code and must be approved as provided in this Declaration. Chain-link fences will not be permitted. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

Section 11. Swimming Pools. No above-ground swimming pool is permitted on any Lot in the Subdivision, except that small, inflatable wading pools shall be permitted in the back yard of the Lot during the summer only. The Owner shall be responsible for replacing any dead grass which results from the Owner's placing a pool in the yard area.

Section 12. Garages. No garage on any Lot may be enclosed for living spaces, but shall remain a garage for parking of vehicles of the Owner of the Lot.

Section 13. Units Constructed on Lots 46 through 60. Any gutters on the roof of Units constructed on Lots 46-60, inclusive, which do not discharge storm water to the front of the Unit shall be tied directly into a stormwater Inlet or shall surface drain directly to stormwater inlets which drain to the stormwater detention pond. No Unit constructed on any of these Lots shall have an uncovered patio.

Section 14. Rental of Units. An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least twelve (12) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Silver Lake Bluffs, recorded in the Wake County Registry. Tenant acknowledges that he has

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received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same.”

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease.

Section 15. Minimum Unit Size and Design.

- (a) No Unit shall contain less than 1,300 square feet of heated space.
- (b) No Unit shall contain more than three (3) bedrooms.
- (c) Excluding windows and doors, the front façade of every Unit shall contain at least fifty percent (50%) brick or stone, or a combination thereof.
- (d) No Unit shall be constructed of synthetic stucco.

Section 16. Restrictions on Sale of Units. After the initial sale of the Units, the Units shall not be offered for sale or rent in any coordinated, centralized manner. Nothing in this Section shall prohibit the use of a multiple listing service, web site advertisement, or other generally accepted means of marketing residential real estate.

Section 17. Fines. The Board of Directors 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 individual special assessment against the Lot of the Owner against whom such fine or penalty is assessed.

Section 18. Other Governing Documents. The Subdivision is part of the Silver Lake Planned Unit Development, and the Lots within the Subdivision, and the Owners of such Lots, are subject to the Master Declaration. In the event of an inconsistency between any provision of this Declaration and the Master Declaration, the more restrictive provision shall control.

**ARTICLE XII
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 in no event be deemed a waiver of the right to do so thereafter.

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

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

Section 2. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by a vote of eighty percent (80%) of the Owners after the expiration of said twenty-five (25) year period.

This Declaration may be amended by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots and only in strict compliance with §47F-2-112 of the Act, provided, however, that Declarant's rights hereunder may not be amended or altered without the prior written consent of Declarant. Any amendment must be properly recorded and shall take effect only upon recording. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof correct shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of any Person, may amend this Declaration during the Declarant Control Period for the limited purposes of correcting clerical or typographical errors or complying with any statute, ordinance, rule, regulation or interpretation of any Governmental Entity. Furthermore, the Declarant, without the consent of any other Person, may amend this Declaration during the Declarant Control Period so long as such amendment does not adversely affect title to or use of any Owner's Lot or any Owner's use of the Townhome Common Area.

No amendment shall be effective unless it has been approved, if required, by the City, and recorded in the office of the Register of Deeds of Wake County. No amendment to this Declaration shall be effective if such amendment would be prohibited under Section 3 of Article XIV of the Master Declaration unless such amendment is approved in writing by the Declarant.

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 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; Remedies. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Townhome 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 the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a individual 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

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the Townhome 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 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 Townhome 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 or drainage facility servicing his Lot.

The Association and the Master Association shall each 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 Townhome 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 Townhome 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 which 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:

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CERTIFICATE OF THE SILVER LAKE BLUFFS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the SILVER LAKE BLUFFS 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 Declaration, the more restrictive provision shall control. In the event of a conflict between this Declaration and the Article 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

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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.

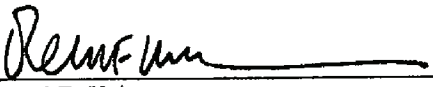
(Signature on following page)

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

DECLARANT

M/I Homes of Raleigh, LLC,
a Delaware limited liability company

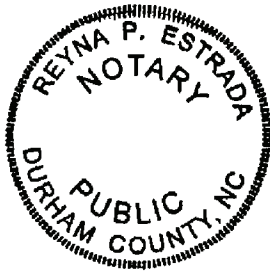
 (Seal)
Edward F. Kristensen
Area President

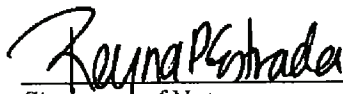
STATE OF NORTH CAROLINA – COUNTY OF WAKE:

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

Edward F. Kristensen, Area President of M/I Homes of Raleigh, LLC

Date: August 2nd, 2010
(Stamp or Seal)




Signature of Notary
Printed Name: Reyna P. Estrada
My commission expires: May 19th, 2014

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EXHIBIT A

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

All of the real property shown and described on the maps entitled "Recombination, Tree Conservation, Nitrogen Loading, Easement, Right-of-Way Dedication & Townhome Plat For SILVER LAKE BLUFFS", prepared by Bass, Nixon & Kennedy, Inc., and recorded in Book of Maps 2010, Pages ~~847-853~~, Wake County Registry, SAVE AND EXCEPT the areas indentified thereon as "116 M.A.C.A." "125 M.A.C.A & Private Drainage Easement", "127 M.A.C.A." and "128 Future Development".

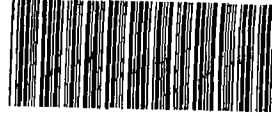
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EXHIBIT B

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

All of the real property, containing 3.7590 acres, more or less, shown and described as "128 Future Development" on the maps entitled "Recombination, Tree Conservation, Nitrogen Loading, Easement, Right-of-Way Dedication & Townhome Plat For SILVER LAKE BLUFFS", prepared by Bass, Nixon & Kennedy, Inc., and recorded in Book of Maps 2010, Pages 847-853, Wake County Registry.

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



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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages *39* *AR*