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

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

CONTENTS

	<u>Page</u>
PREAMBLE	1
ARTICLE I - DEFINITIONS	2
Section 1 - Act	
Section 2 - Additional Property and Annexed Property	
Section 3 - Association and Master Association	
Section 4 - Board of Directors and Board	
Section 5 - Bylaws	
Section 6 - Code	
Section 7 - Common Area	
Section 8 - Common Expense	
Section 9 - Common Property	3
Section 10 - Declarant	
Section 11 - Declarant Control Period	
Section 12 - Declaration and Master Declaration	
Section 13 - Dwelling, Dwelling Unit and Unit	

	<u>Page</u>
Section 7 - Notice and Quorum for Any Action Authorized Under Section 5	14
Section 8 - Effect of Nonpayment of Assessments; Remedies	
Section 9 - Subordination of the Lien to Mortgages	
Section 10 - Working Capital Fund	15
Section 11 - Declarant’s Obligation to Fund Operating Deficits	
Section 12 - Neighborhood Assessments	
Section 13 - Reserve Account	
Section 14 - Fines	
Section 15 - Stormwater Assessments for Existing Silver Lake	
ARTICLE VI - MAINTENANCE OF LOTS AND COMMON AREA	17
Section 1 - Owner’s Responsibility; Remedy for Owner's Failure to Maintain	
Section 2 - Maintenance by the Association	
Section 3 - Assessment of Cost	
ARTICLE VII - RIGHTS OF LENDERS	17
Section 1 - Books and Record	
Section 2 - Notice to Lenders	
Section 3 - Approval of Holders of First Deeds of Trust	18
Section 4 - Payment of Taxes and Insurance Premiums	
Section 5 - Collection of Assessments	
ARTICLE VIII - EASEMENTS	18
Section 1 - Access and Utility Easements	19
Section 2 - Easement for Support	
Section 3 - Easement over Common Area	20
Section 4 - Association’s Easements upon Lots	
Section 5 - Easements for Development	
Section 6 - Easement for Encroachments	
ARTICLE IX - ARCHITECTURAL CONTROL	20
ARTICLE X - USE RESTRICTIONS	21
Section 1 - Land Use and Building Type	
Section 2 - Building Setbacks; House Location	
Section 3 - Fences	22
Section 4 - Temporary Structures	
Section 5 - Parking; Driveways and Parking Pads; Abandoned Vehicles	
Section 6 - Animals	
Section 7 - Nuisances	23
Section 8 - Signs	
Section 9 - Antennas; Satellite Dishes	
Section 10 - Swimming Pools	
Section 11 - Mailboxes	

	<u>Page</u>
Section 12 - Maintenance of Lots and Improvements; Construction	24
Section 13 - Garbage; Unsightly Storage	
Section 14 - Limitations on Rental of Dwellings	
Section 15 - Waiver of Violations	25
Section 16 - Street Lighting	
 ARTICLE XI - GENERAL PROVISIONS	 25
Section 1 - Enforcement	
Section 2 - Term; Amendment	26
Section 3 - Subdivision of Lots	
Section 4 - Rules and Regulations	
Section 5 - Condemnation/Casualty	27
Section 6 - Association Contracts and Leases During Declarant Control Period	
Section 7 - Evidence of Member Approval	
Section 8 - Number and Gender	28
Section 9 - Captions	
Section 10 - Severability	
Section 11 - Conflicts	
Section 12 - Rule Against Perpetuities	
Section 13 - Declarant	29
Section 14 - Non-Discrimination	
Section 15 - Security Measures	
Section 16 - Hazardous Substances	
Section 17 - Reservoir Watershed Protection Overlay District	
 ARTICLE XII – RALEIGH CITY CODE REQUIREMENTS	 30
<u>Part A - Definitions and General Requirements</u>	30
Section 1 - Definitions	
(a) Act	
(b) Annexation Declaration	
(c) Annexed Property	
(d) Association	
(e) Board	31
(f) City or City of Raleigh	
(g) Code	
(h) Common Area	
(i) Common Expense	32
(j) Declarant	33
(k) Declarant Annexation Date	
(l) Declarant Control Period	
(m) Declaration	
(n) Fiscal Year	
(o) Governing Documents	

	<u>Page</u>
(p) Governmental Entity	34
(q) Include or Including	
(r) Lot	
(s) Maintain, Maintenance and Maintaining	
(t) Member	
(u) Mortgagee	
(v) Open Space	
(x) Operating Deficit	
(y) Owner	35
(z) Person	
(aa) Properties	
(ab) Registry	
(ac) Stormwater Agreement	
(ad) Stormwater Control Measures; Stormwater Control Facilities	
(ae) Stormwater Maintenance Manual and Budget	
Section 2 - Applicability	36
Section 3 - Conflicts	
Section 4 - Amendment of Declaration	
Section 5 - Assessments	37
(a) Obligation for Assessments	
(b) Purpose of Assessments	
(c) Budgets; Amount of Assessments	
(d) Effect of Non-Payment; Remedies	38
(e) Classes of Membership	
(f) Declarant's Obligation to Fund Operating Deficits; Assessment Credit	
(g) Certificate of Payment	39
Section 6 - Membership and Governance	
(a) Membership	
(b) Members' Rights of Use	
(c) Voting Rights	40
(d) Proxies	
(e) Quorum	
Section 7 - Permanently Protected Undisturbed Open Space Area	
Section 8 - Tree Conservation	
Section 9 - Insurance	41
Section 10 - Indemnification	
Section 11 - On-Street Parking	
Section 12 - Sight Triangles	
Section 13 - Annexed Property	
Section 14 - Access Easement for Repair of Dwellings	42
Section 15 - Access for Governmental Agencies	43
Section 16 - Conveyance or Dedication of Common Areas	
Section 17 - Private Utility Lines	
Section 18 - Landscape Easements	

BK013043PG02447

	<u>Page</u>
<u>Part B - Stormwater</u>	44
Section 1 - Stormwater Control Measures	
Section 2 - Creation of Stormwater Assessments	
Section 3 - Purpose of Stormwater Assessments	45
Section 4 - Assignment of Collection Rights and Lien Rights of the City	46
Section 5 - Effect of Assignment	
Section 6 - Annexation of Annexed Property	47
Section 7 - Drainage Easement	
Section 8 - Joint and Several Liability	
Section 9 - Relocation of Drainage Easements	48
<u>Part C - Cluster Unit Development</u>	48
Section 1 - Open Space	
Section 2 - Residential Density Transfers	49
Section 3 - Development Rights	
Section 4 - Addition of Land	
Section 5 - Number of Dwelling Units	
Section 6 - Common Party Walls	50
<u>Part D - City Greenways</u>	50

BK013043PG02448

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

This Declaration is made as of the date on which it is recorded in the Registry (hereinafter defined), by **M/I HOMES OF RALEIGH, LLC**, a Delaware limited liability company, (hereinafter the "Declarant").

P R E A M B L E:

WHEREAS, Declarant is the owner in fee simple or contract purchaser of approximately 46.75 acres of land located in the City of Raleigh, Swift Creek Township, Wake County, North Carolina, portions of which Declarant intends to develop into a planned community of detached and attached single family residences, to be known as SILVER LAKE (the "Community"); and

WHEREAS, Declarant desires to provide for the Maintenance and upkeep of certain Common Property and Limited Common Property (hereinafter defined) within the Community, to provide for Maintenance of certain storm water drainage systems and facilities within the Community, and to provide for the enforcement of covenants and restrictions applicable to the Community, and, to that end, desires to subject the Properties (hereinafter defined) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each Owner of any portion thereof; and

WHEREAS, Declarant has incorporated under North Carolina law, as a nonprofit corporation, the Silver Lake Master Association, Inc., to carry out the foregoing functions.

NOW, THEREFORE, Declarant hereby declares that the real property described in **EXHIBIT A** to this Declaration, and such additions thereto as may be hereafter made pursuant to the provisions of 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 Persons owning any right, title or interest therein or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit and be binding upon each Owner thereof.

ARTICLE I DEFINITIONS

The following terms, when used in this Declaration, shall have the meaning set forth below. Capitalized terms not specifically defined in this Article I shall have the meaning of such term as set forth in the Act, the North Carolina Nonprofit Corporation Act (Chapter 55A of the North Carolina General Statutes), or in any other provision of this Declaration including, without limitation Section 1 of Part A of Article XII hereof.

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

Section 2. "Additional Property" or "Annexed Property" (the terms being used interchangeably) shall mean and refer to all real property subjected to this Declaration, by any of the methods set forth in Article II hereof, after the initial recording of this Declaration. See also Section 1(c) of Part A of Article XII hereof.

Section 3. "Association" and "Master Association" (the terms being used interchangeably) shall mean and refer to the **SILVER LAKE MASTER ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns. See also Section 1(d) of Part A of Article XII hereof.

Section 4. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws, and is the "Executive Board" as defined in the Act. See also Section 1(e) of Part A of Article XII hereof.

Section 5. "Bylaws" shall mean and refer to the Bylaws of the Association, as they may now or hereafter exist, including all duly adopted amendments thereto.

Section 6. "Code". See Section 1(g) of Part A of Article XII hereof.

Section 7. "Common Area". See Section 1(h) of Part A of Article XII hereof. Common Area also includes all property declared to be Common Area by this Declaration or by the Declarant or the Association or shown on any recorded map of the Properties as Common Area, Open Space, BMP Access Easement, or any similar term or abbreviation or variation thereof, and other any property and improvements required to be included as such by the Code or other Legal Requirement. (Note: The definition of Common Area in this Declaration is broader than the definition of "common elements" in the Act.) Common Area shall be Maintained by the Association unless Maintained by the Person owning the real property as to which the Association has only an easement or other right of use, or conveyed to or owned by another nonprofit entity formed for similar purposes, or dedicated to public use and accepted by a public agency, authority, or utility.

Section 8. "Common Expense" shall mean and refer to: (i) all expenses of Maintenance of Common Property (hereinafter defined), including repair, restoration and replacement thereof, and including monies allocated to reserve funds; (ii) *ad valorem* taxes and public assessments, if any, levied against the Common Property (hereinafter defined) owned in fee by the Association (but specifically excluding *ad valorem* taxes on real property on, under or over

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which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or Maintained by the Association result in additional taxes on such real property that would not be assessed in the absence of such improvements, in which event such additional taxes shall be paid by the Association as a Common Expense); (iii) premiums for hazard, liability and other insurance insuring the Common Property or the Association, its officers, directors and employees; (iv) fees and expenses of attorneys, accountants, and other Persons employed by the Association for Association business; (v) expenses declared to be or described as Common Expenses by the Act, the Code, or this Declaration; (vi) expenses determined by the Board of Directors or by the Members to be Common Expenses; and (vii) all other expenses incurred by the Association in performing its functions, including operating, management and administrative expenses. *See also* Section 1(i) of Part A of Article XII hereof.

Section 9. "Common Property" shall mean and refer to Common Area *and* all personal property owned, leased or used by the Association, or with respect to which the Association has a financial obligation, for the common use, enjoyment or benefit of the Members or the Properties, and any substitutions or replacements thereof.

Section 10. "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 to whom or which Declarant might assign or delegate all or any of the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Registry. *See also* Section 1(j) of Part A of Article XII hereof.

Section 11. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors and officers of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) the end of the seventh (7th) calendar year after recording of this Declaration;
- (b) the date on which Declarant no longer owns any property within the Community or any of the Property included on **Exhibit B** attached hereto; or
- (c) Relinquishment or transfer by Declarant of all Special Declarant Rights as provided in §47F-3-104 of the Act.

See also Section 1(l) of Part A of Article XII hereof.

Section 12. "Declaration" and "Master Declaration" (the terms being used interchangeably) shall mean and refer to this "Master Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Silver Lake", and all amendments thereto and supplements thereof. *See also* Section 1(m) of Part A of Article XII hereof.

Section 13. "Dwelling", "Dwelling Unit" and "Unit" shall mean and refer to any building or portion thereof which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants of the Owner, and specifically including detached Dwellings located on separate Lots and attached Dwellings located on separate Lots (for example, Townhomes, in which more than one Dwelling may be located in a single building, but each Dwelling is on a separate Lot). A Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

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Section 14. "Exempt Property" shall mean and refer to all portions of the Properties included within any of the following categories: (i) Common Area; (ii) Sub-Association Common Area; (iii) property owned by, or dedicated to and accepted by the City or a public utility, including property within the right-of-way of publicly-dedicated streets and roads; (iv) property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, provided, however, that any property containing a Dwelling used as a residence shall not be Exempt Property.

Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no voting rights in the Association based on ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, all Exempt Property owned by the City or a utility provider, and all Exempt Property within publicly-dedicated street rights-of-way, shall be exempt from all of the provisions of the Declaration, except for any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, the City or any other Person.

Exempt Property that loses its status as Exempt shall be reclassified as a Lot or Development Parcel, as appropriate, and shall be subject to all of the terms and provisions of the Declaration in the same manner and to the same extent as other Lots and Development Parcels.

Section 15. "Legal Requirements" shall mean and refer to any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the County of Wake, North Carolina, the City, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Properties, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

Section 16. "Limited Common Area" shall mean and refer to all Common Area, together with any improvements thereon, owned, leased, used or Maintained by the Association for the benefit of fewer than all of the Members or less than all of the Properties, and which has been designated as such by the Declarant or the Association. "Limited Common Property" shall mean and refer to all Common Property owned, leased, used or Maintained by the Association for the benefit of fewer than all of the Members or less than all of the Properties, and which has been designated as such by the Declarant or the Association. Limited Common Area may include, for example, private streets, alleys, and Stormwater Control Measures serving less than all of the Properties. Limited Common Area benefiting only the Townhouses is herein sometimes referred to as "Townhouse Common Area" or "Sub-Association Common Area".

Section 17. "Limited Common Expense" shall mean and refer to all expenses of the type included within the term "Common Expense" but which are related solely and specifically to Limited Common Property. Limited Common Expenses shall be paid out of assessments levied only against the portions of the Properties benefited by Limited Common Property.

Section 18. "Lot" shall mean and refer to any portion of the Properties with delineated boundary lines, as shown on a plat recorded in the Registry or as identified by metes and bounds description, that is intended for construction of a Dwelling thereon, or on which a Dwelling has been constructed. A Lot intended to be used for construction thereon of a detached or attached Dwelling shall become a Lot upon recording in the Registry of a plat creating such Lot. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the

recording of a new plat, the newly platted lot thereafter shall constitute a Lot. *See also* Section 1(r) of Part A of Article XII hereof.

Section 19. "Member". *See* Section 1(t) of Part A of Article XII hereof.

Section 20. "Neighborhood" shall mean and refer to each separately developed residential area within the Properties which has been designated as such on one or more recorded maps of portions of the Properties and which has been subjected to this Declaration at the time of recording or by Annexation Declaration as provided in Article II and Section 13 of Part A and Section 6 of Part B of Article XII hereof. In the sole discretion of Declarant, a Neighborhood may (or may not) be part of a Sub-Association and the Lots therein subject to a Sub-Association Declaration.

Section 21. "Owner". *See* Section 1(x) of Part A of Article XII hereof.

Section 22. "Person". *See* Section 1(y) of Part A of Article XII hereof.

Section 23. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to said Article II. *See also* Section 1(z) of Part A of Article XII hereof.

Section 24. "Registry" shall mean and refer to the office of the Register of Deeds for Wake County, North Carolina, or any successor office in which deeds, plats, easements, mortgages and deeds of trust are recorded. Any reference herein to a plat or document being recorded refers to such plat or document being recorded in the Registry. *See also* Section 1(aa) of Part A of Article XII hereof.

Section 25. "Special Declarant Rights" shall mean and refer to all rights granted to, or reserved by, or established for the benefit of, Declarant in this Declaration, the Articles of Incorporation and Bylaws of the Master Association (whether or not such rights are referred to as Special Declarant Rights in such documents). Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, at any time and from time to time, subject to such terms and conditions as Declarant specifies in the assignment document. Except as specifically provided herein, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, and the assignment becomes effective upon the recording of the document in the Registry or on any later date specified therein.

Section 26. "Stormwater Agreement". *See* Section 1(ab) of Part A of Article XII hereof.

Section 27. "Stormwater Control Measures". *See* Section 1(ac) of Part A of Article XII hereof. Because different Stormwater Control Measures will serve different phases, sections or portions of the Properties and because the cost of Maintaining and replacing such Stormwater Control Measures may be different, the Stormwater Assessments (defined in Part B, Section 2, of Article XII hereof) may be different for different portions of the Properties.

Section 28. "Sub-Association" shall mean and refer to a North Carolina nonprofit corporation or other entity organized for the purpose of owning, managing and/or Maintaining that Sub-Association's Common Property (including, with regard to a condominium, its common elements) and including, without limitation, a property owners' association in a portion of the Properties containing Townhomes or condominiums. Assessments imposed upon the Members of the Association by the documents establishing or governing a Sub-Association or subjecting an applicable portion of the Properties thereto shall be in addition to, and not in lieu of, assessments imposed upon such Members by this Master Declaration.

Section 29. "Sub-Association Common Area" and "Sub-Association Common Property" (the terms being used interchangeably) shall mean and refer to portions of the Properties owned or Maintained by a Sub-Association for the use, enjoyment and/or benefits of its members. All private streets and open space owned by, or under the jurisdiction of, a Sub-Association are Sub-Association Common Property. "Sub-Association Limited Common Property" and "Sub-Association Limited Common Area" are defined as Sub-Association Common Property that is established for the benefit of fewer than all of the Members of the Sub-Association or less than all of the property subject to the jurisdiction of the Sub-Association.

Section 34. "Sub-Association Declaration" shall mean and refer to a declaration, and all amendments and supplements thereto, recorded in the Registry and applicable solely to Owners, Lots and Sub-Association Common Property within the jurisdiction of a Sub-Association. During the Declarant Control Period, no Sub-Association Declaration shall be recorded without the prior written consent of Declarant, as evidenced by Declarant's execution of same. *See also* Section 5 of Article III hereof.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION;
ADDITION OF PROPERTY; WITHDRAWAL OF PROPERTY;
SUBDIVISION DECLARATION**

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.

Section 2. Additions to Existing Property.

(a) By Declarant. At any time during the Declarant Control Period, Declarant may subject Annexed Property to this Declaration, without approval of any Person other than the City (if required by the Legal Requirements), by recording an "Annexation Declaration" (*see* Section 1(b) of Part A of Article XII) extending the operation and effect of this Declaration to such Annexed Property. Except to the extent required by the Legal Requirements, nothing in this Declaration shall be deemed to require the Declarant to subject any Additional Property to this Declaration.

(b) By the Members. If a Person other than the Declarant desires at any time to subject Annexed Property to the Declaration, such Annexed Property may be annexed only by the affirmative vote of at least sixty-seven percent (67%) of the votes cast by the Members present at a

duly-called meeting of the Association for which the notice of meeting includes notice of the proposal to annex such Annexed Property and the recording in the Registry of an Annexation Declaration signed by the owner of such Annexed Property and by the appropriate officer(s) of the Association certifying the required meeting and vote. In addition to the foregoing, during the Declarant Control Period, such annexation shall be valid only with the consent of Declarant, as evidenced by Declarant's execution of the Annexation Declaration.

(c) Approval by Governmental Entities. Subjection of Annexed Property to the Declaration must be approved (i) by the City, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such annexation FHA and/or VA regulations require such approval, provided, however, that the real property described on **Exhibit B** is part of the property approved by the City as of the date of execution of this Declaration, and the property described on **Exhibit B** may be annexed by Declarant without further approval of any Person, except for any additional approval required by the City.

(d) Subjection of Annexed Property to the Declaration must also comply with Section 13 of Part A of Article XII.

(e) Annexation Declaration. Each Annexation Declaration shall be effective to subject Annexed Property to this Declaration only upon obtaining all required approvals and upon its recording in the Registry, and the effective date of such annexation shall be the later of the date specified therein, if any, or the date of recording. Each Annexation Declaration shall describe the Annexed Property and indicate that the Annexed Property is being subjected or annexed to the Declaration. A Annexation Declaration need not be in any specific form and need not be titled Annexation Declaration (for example, the required subjecting language may be contained in a deed from the Declarant conveying the Annexed Property), but it shall indicate clearly the intention to subject or annex such Annexed Property. Any Annexation Declaration may contain such use restrictions and such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Annexed Property, not in conflict with this Declaration, as the Person subjecting such Annexed Property to the Declaration may determine, but this Declaration shall control over any provision of any Annexation Declaration that conflicts or is inconsistent with this Declaration. During the Declarant Control Period, each Annexation Declaration shall have been approved in writing by the Declarant prior to recordation.

(f) Votes Allocated to Annexed Property. The votes of the Members in the Annexed Property shall be allocated in the same manner that votes are allocated in portions of the Properties already subject to the Declaration. 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. Conveyance of Common Area in Annexed Property. Common Area, if any, located within any Annexed Property, or the applicable phase or portion thereof, shall be conveyed to the Association pursuant to the requirements of Section 3 of Article IV and Section 13 of Part A of Article XII of this Declaration.

Section 4. Subdivision Declaration. Within the Properties there will be certain separate and distinct phases, sections, or subdivisions. Because such phases, sections or subdivisions may have varying Lot sizes, types of Dwelling Units, marketing considerations and

other differences, it may be necessary or desirable to impose additional and different covenants and restrictions on such phases, sections, or Neighborhoods which are applicable solely to such phase, section or Neighborhoods (the foregoing being referred to herein as a "Subdivision Declaration"). Accordingly, the Declarant or other Person who owns any such phase, section or subdivision of the Properties may subject such phase, section or subdivision to such Subdivision Declarations (which are distinguished from Sub-Association Declarations in that no Sub-Association will be formed in connection therewith) as the Declarant or other Person, in his, her or its discretion, may from time to time determine, provided, however, that, during the Declarant Control Period, no Person other than the Declarant may subject any phase, section or subdivision of the Properties to any Subdivision Declaration unless the Declarant consents in writing thereto by executing such Subdivision Declaration. More than one phase, section or subdivision may be subjected to the same Subdivision Declaration. Any Subdivision Declaration may do any one or more of the following: (i) create and regulate the use of and assessments for Limited Common Area; (ii) establish minimum building setback distances and minimum Dwelling square footage requirements for such phase, section or Neighborhood that are more or less than the minimum building setback distances and minimum Dwelling square footage requirements, if any, that are specified in the Declaration; and (iii) specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with the Declaration, as the Person subjecting such real property to the Subdivision Declaration may determine (provided, however, the provisions of the Declaration control over any less restrictive provisions of any Subdivision Declaration). Except for the foregoing matters that may be different in a Subdivision Declaration from the requirements in the Declaration, the Declaration shall control over any provision of any Sub-Association Declaration that conflicts or is inconsistent with the 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 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 Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person owns an interest (other than a security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Lots owned by Class A Members are "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant. A Lot owned by the Declarant shall be a "Class B" Lot. Subject to the provisions of this subsection,

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Declarant shall be entitled to nine (9) votes for each Lot that it owns. 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, Declarant will exercise its right to appoint and remove all of the Directors and officers of the Association until the earlier of the expiration of the Declarant Control Period or Declarant surrenders such right by written instrument filed with the Secretary of the Association. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. As stated in Section 14 of Article X hereof, it is the intent of the Declarant that all Dwellings within the Community be occupied by the Owner thereof. Notwithstanding the foregoing, in no event shall the votes of Owners of Dwellings which are vacant or are otherwise not occupied by the Owner of the Lot be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association and the votes of such the Lots of such Owners shall automatically be fractionally reduced for such purpose. 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, other provisions of this Declaration, any Annexation Declaration, any Subdivision Declaration, or the Legal Requirements, 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 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, subject to Legal Requirements, to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however, that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes 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 Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to 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 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 Common Area for other property and consideration provided that:

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

(ii) after the notice is given, the Association approves the exchange in accordance with the minimum percentage of votes required by N.C.G.S. §47F-3-112(a);

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

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

(v) the exchange is approved by the Planning Director of the City, if required by the Code.

(f) The right of the Association to sell, lease, convey or dispose of any personal property owned by the Association.

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.

(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 it will convey to the Association title to those portions of the Common Area and Open Space to be owned by the Association, and the Association agrees to accept each such conveyance. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself and its successors and assigns, an easement over, under, across and through the Common Area so long as it owns any Lot within the Properties or any property described in **Exhibit B** to this Declaration, for the purpose of constructing any improvements on the Common Area and/or the Lots as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by the Declarant to the Association shall be free and clear of all encumbrances, judgments, and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Community, utility, drainage, greenway conservation, and other easements of record or shown on the recorded plats of the Community, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and Maintained by the City or other governmental entity, or a public or private utility company. Title to the Common Area and Open Space in each phase or section of the Properties shall be conveyed to the Association not later than the time of conveyance of the first Lot within such phase or section.

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

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area 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 any Common Area; (ii) erect gates, fences, buildings or other structures on any Common Area; (iii) place any garbage receptacles on any Common Area; (iv) fill or excavate any Common Area or portion thereof; or (v) plant vegetation on or otherwise restrict or interfere with the use, Maintenance and preservation of the Common Area.

It is the intent of the Declarant that a Common Area Easement 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 in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to Maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of Maintaining same and shall have the right to charge such Owner for 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 deemed a special assessment against such Owner's Lot and shall be collected in and shall incur the late charges, interest and costs of

collection as set forth in Section 8 of Article V and Section 5 of Part A of Article VII of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) Maintain the 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 the Code and other Legal Requirements and this Declaration and the rules and regulations adopted by the Association as provided herein and in the Bylaws; (ii) procure and Maintain adequate liability insurance covering the Association and its Members against any loss or damages suffered by any Person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against the Common Area owned in fee by the Association.

(c) Association's Right of Entry. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent reasonably necessary to gain access to and Maintain the Common Area Easement and any improvements therein, including Maintenance to be done by the Owner as provided in subsection (a) above, 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 ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the annual assessments, special assessments, and limited special assessments to be established and collected by the Association as provided herein. All assessments which are unpaid when due, together with interest and late charges set forth in Section 8 of this Article V and Section 5 of Part A of Article VII hereof, and all costs of collection, including, without limitation, reasonable attorneys' fees, shall be a charge on the Lot of such Owner, and, as provided in §47F-3-116 of the Act, shall be a continuing lien against the Lot against which such assessment is made. As provided in §47F-3-116 of the Act, such lien shall attach to the Lot only if an assessment against the Lot remains unpaid for at least thirty (30) days and a claim of lien is filed by the Association as provided in the Act. Each such assessment or charge, together with interest and costs of collection, shall also be the personal or corporate obligation of the Person owning such Lot or Development Parcel at the time when the assessment fell due, but such personal or corporate obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them; however, such assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made. *See also* Section 5(a) of Part A of Article XII hereof.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents and occupants of the Community and, in particular, for (i) acquisition, improvement and Maintenance of properties,

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services and facilities related to the use and enjoyment of the Common Property; (ii) Maintenance, repair and reconstruction of the Common Area and improvements thereon including, without limitation, Stormwater Control Facilities thereon, and including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against Common Property owned in fee by the Association; (iv) procurement of insurance; (v) employment of attorneys, accountants, engineers, management agents and other Persons for Association business; (vi) payment of principal and interest on funds borrowed by the Association; (vii) reserve funds; and (viii) such other needs as may arise. *See also* Section 5(b) of Part A of Article XII hereof.

Section 3. Annual Assessments (*see also* Section 5 of Part A of Article XII). Until December 31, 2008, the Maximum Annual Assessment shall be One Thousand Two Hundred and No/100 Dollars (\$1,200.00) for each Class A Lot. The Maximum Annual Assessment for Class B Lots shall be zero, provided, however, that any Lot which contains a Dwelling occupied as a residence shall be assessed at the Class A rate.

Subject to the provisions of this Section and the provisions of Section 5(c) of Part A of Article XII hereof, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment then in effect. The annual assessment for Class B Lots shall be zero (0), provided, however, that any Lot which contains a Dwelling occupied by any Person as a residence shall be assessed at the Class A rate. Except as otherwise provided in this Declaration, an Annexation Declaration, a Subdivision Declaration, a Sub-Association Declaration, or any Legal Requirements (e.g., additional or different stormwater assessments or different assessments pertaining to Limited Common Area), annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannual, quarterly or monthly basis, as determined by the Board.

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.

Section 4. Additional Assessments for Limited Common Property and Private Alleys. Declarant reserves the right, by this Declaration, Annexation Declaration, Sub-Association Declaration, or Subdivision Declaration, to subject portions of the Properties to provisions requiring the Owners thereof to pay additional annual assessments and special assessments to the Association for the Maintenance of Limited Common Property, including, without limitation, Stormwater Control Facilities and private streets, private rights-of-way, private alleys, and private alley easements benefiting such portions of the Properties.

All of the provisions of this Declaration relating to annual and special assessments shall apply to the additional annual and special assessments for Limited Common Property, with the following exceptions: (i) the additional assessments with respect to any particular Limited Common Property are assessed only against the Owners of the portion of the Properties associated with such Limited Common Property; (ii) the initial additional maximum annual assessment and additional annual assessment for each Limited Common Property shall be established in this Declaration, the Annexation Declaration, or other declaration that creates or establishes that Limited Common Property or the obligations associated therewith; (iii) the actual additional annual and special assessments may vary from phase to phase, section to section, subdivision to

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subdivision, or Neighborhood to Neighborhood; and (iv) the additional annual and special assessments for portions of the Properties in any particular phase, section, subdivision or Neighborhood within the Properties shall be used exclusively in connection with the Limited Common Property associated with that phase, section, subdivision, or Neighborhood.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring cost, *provided that* any such assessment shall, during the Declarant Control Period, have be approved by the Declarant and a majority of the votes attributable to the Class A Lots, and further provided that the special assessments for Class B Lots shall always be zero (0), except that any Class B Lot which contains a Dwelling occupied by any Person as a residence shall be assessed at the Class A rate. Except as otherwise provided in this Declaration, an Annexation Declaration, a Subdivision Declaration, a Sub-Association Declaration, or any Legal Requirement, special assessments shall be fixed at a uniform rate for all Lots within each Class and maybe collected on a yearly, semiannually, quarterly or monthly basis, as determined by the Board of Directors.

Section 6. Limited Special Assessments. The Board of Directors, without vote of the Members, may levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Furthermore, any fine imposed against an Owner pursuant to Section 14 of this Article V and Section 3 of Article VII of the Bylaws shall also constitute a limited special assessment against such Owner's Lot. Special assessments and limited special assessments shall constitute a lien to the same extent as other assessments against the Lot.

Section 7. Notice of Quorum for any Action Authorized Under Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting maybe called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 8. Effect of Nonpayment of Assessments; Remedies. See Section 5(d) of Part A of Article XII hereof.

Section 9. Subordination of the Lien to Mortgages. The liens provided 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 first deed of trust shall extinguish the lien of any assessments which become 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 first deed of trust.

Section 10. Working Capital Fund. At the time of closing of the 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 operating expenses or to acquire additional equipment or serviced deemed by the Board to 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. See Section 5(f) of Part A of Article XII hereof.

Section 12. Neighborhood Assessments. Notwithstanding any other provision of this Declaration, the Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments (deemed to be limited special assessments) against the Lots in a particular Neighborhood which is not subject to a Sub-Association Declaration to fund actual and estimated expenses incurred by the Association for the primary benefit of the Lots within such Neighborhood including, without limitation, Maintenance required to be performed by the Association with respect to property within that Neighborhood. The Association shall levy Neighborhood Assessments within a Neighborhood upon the written request of Owners of at least two-thirds (2/3) of the Lots within that Neighborhood.

Section 13. Reserve Account. The Association shall establish a separate reserve account to fund major repairs to and replacements of Common Property including, without limitation, replacement of personal property falling within the category of Common Property, repaving of private streets and parking areas, replacement of roofs on Townhouse buildings and other improvements on Common Area, major repair or replacement of Stormwater Control Measures. Each annual budget shall show the amount to be placed in reserve for each category for which reserves are to be held.

Section 14. Fines. Subject to the provisions of this Declaration, the Bylaws of the Association, and §47F-3-107.1 of the Act, the Board of Directors shall have the right and authority to levy fines or suspend privileges or services provided by the Association for reasonable periods for the violation of any provision of this Declaration and other Rules hereafter promulgated by the Board of Directors pursuant thereto, provided, however that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations. Any monetary fine shall be deemed a limited special assessment against the Lot of the Owner against whom such fine is assessed.

Section 15. Stormwater Assessments for the Existing Silver Lake. The City's zoning regulations applicable to the Properties (Z-52-05, Condition K) includes the requirements (i) that the existing Silver Lake (the "Lake") remain, (ii) that Maintenance of the Lake shall be the responsibility of a homeowners association, (iii) and that, if the Lake is not used as a stormwater control measure, the homeowners association documents require a sinking fund to be established for the cost of Maintaining the lake and dam. Due to the fact that the existing Silver Lake is not part of the stormwater control measures for the portion of the Properties being subjected to this

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Declaration at the time of recording, Declarant has deemed it advisable to provide for future compliance with the requirements of the zoning regulations. Accordingly, Declarant hereby notifies the Members of the Association that:

(a) Development of Adjacent Property by Declarant. In the event that, as currently anticipated, Declarant develops and annexes into the Properties any or all of the three properties immediately to the west of the Properties subjected to this Declaration at the time of recording, namely, Parcels 1, 2 and 3 on **Exhibit B** attached hereto and made a part hereof (hereinafter the "Adjacent Properties"), such annexation will include the existing Silver Lake, with the result that all of the Members of the Association, including the Owners of Lots within the portion of the Properties subject to this Declaration at the time of recording thereof, shall be required to pay to the Association additional Stormwater Assessments applicable to the existing Silver Lake. The amount of such assessments will be based on the cost of annual Maintenance of the existing Silver Lake and required payments to a replacement fund and will be pro-rated among all of the Members of the Association.

(b) Development of Adjacent Property by Another Person. In the event that the Adjacent Properties are not annexed into the Properties, the Person developing such Adjacent Properties will be required by the City to incorporate the existing Silver Lake into that development and to form a homeowners association (the "Adjacent HOA") to provide for, among other things, the annual Maintenance of the existing Silver Lake and required payments to a replacement fund (collectively, the Lake Stormwater Obligations") and, in such event, the Association and its Members shall have the obligation to pay to the Adjacent HOA a pro-rata portion of the Lake Stormwater Obligations computed by dividing the Lake Stormwater Obligations by the total number of Lots within the Properties *and* on the Adjacent Properties.

(c) Escrow for the Lake. Within thirty (30) days after the date of recording of this Declaration, Declarant shall establish an escrow account with Moore & Alphin, PLLC, for the purpose of collecting and holding funds for the Maintenance and replacement of the Silver Lake as provided in that certain Stormwater Operations and Maintenance Manual and Budget For Silver Lake, Raleigh, North Carolina, dated 1-18-08, and prepared by Bass, Nixon & Kennedy, Inc. The Owner of each Lot shall pay to the Association which, in turn, will pay to the Escrow Agent, the sum of \$217.94 per year, to be held and disbursed by Escrow Agent either: (i) in the event that Declarant develops the Adjacent Property as provided in subsection (a) above, as part of the replacement fund contributions to be made to the City pursuant to the Stormwater Agreement that will be entered into among the Declarant, the Association, and the City pertaining to the Lake; (ii) if Declarant does not develop the Adjacent Property, as payments toward the obligations of the Association and its Members to the Adjacent HOA as provided in subsection (b) above; or (iii) in the event that the existing dam fails prior to disbursement of the escrowed funds pursuant to either subsection (c)(i) or (c)(ii), toward the portion cost of replacing the dam determined by the City to be due from the Owners of the Lots. An Owner's obligation to make payments into escrow as provided herein shall terminate upon the earlier of (A) disbursement of the funds held in escrow (the "Escrow Funds" pursuant to subsections (i) and (ii) hereof, or (B) at such time as the total amount held in escrow equals or exceeds One Hundred Fifteen Thousand Two Hundred Dollars (\$115,200.00), provided, however, in the event that Escrow Funds are disbursed by Escrow Agent pursuant to subsection (c)(iii) hereof, each Owner shall resume making payments until such time as the Escrow Funds again equal or exceed \$115,200.00.

**ARTICLE VI
MAINTENANCE OF LOTS AND COMMON AREA**

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements which 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 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 to perform the necessary Maintenance; and (iv) a statement that, if the Owner fails to perform the Maintenance within such 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 2. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) to the extent the same is not Maintained by a Sub-Association, Maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners; (ii) procure and Maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any Person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Property owned in fee by the Association.

Section 3. Assessment of Cost. In the event that the Association performs Maintenance on any Lot as provided in Section 1 of this Article VI, the cost of any such Maintenance, replace or repairs (including the administration fee) shall be assessed against the Lot upon which such Maintenance is done and shall be added to and become a limited special assessment against such Lot.

**ARTICLE VII
RIGHTS OF LENDERS**

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

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

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

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(b) A lapse, cancellation, or material modification of any insurance policy of 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 its mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of first deeds of trust who have requested notice as provided in Section 2 above 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 or other 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 Common Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Property 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 of 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 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 Person(s) 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 this Declaration.

ARTICLE VIII EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, including, without limitation, those set forth in Article XII hereof, Declarant hereby grants and/or reserves the following easements.

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Section 1. Access and Utility Easements. Easements for the installation and Maintenance of driveway, walkway, water lines, 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 maps of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or Maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

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

An easement is also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of Properties shown and designated as "sign easement", "landscape easement", or "drainage easement", "BMP Access Easement", or any similar designation, and any combination of the foregoing on any recorded map or plat of the any portion of the Properties for the purpose of installing, operating, repairing and Maintaining, as appropriate, landscaping, irrigation system, entrance signage, fencing and Stormwater Control Measures in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing, or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article IX of this Declaration and, if required, by the City.

Declarant grants to and reserves for the Declarant, the Association, the City and their respective 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. Except in recorded Tree Conservation Areas and in recorded Permanently Undisturbed Opens Space Areas, such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, 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 unless such landscaping is required landscaping under the Code. 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 Lot or Unit shall be burdened with an easement of support for the benefit of such adjoining Lot or Unit.

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Section 3. Easement Over Common Area. A perpetual, nonexclusive easement over, under and through the 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 access, ingress and egress to, from and over the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 4. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Community, 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 or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 5. Easements for Development. For so long as Declarant owns any real property within the Properties, Declarant reserves an easement over the Properties for the purpose of allowing Declarant, its successors and assigns, to develop the Properties and construct improvements thereon.

Section 6. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon such other Lot or Common Area for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

ARTICLE IX ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall or other structure (including, without limitation, play equipment, patios, decks, tree houses, parking pads, and sidewalks) shall be commenced, constructed, erected or Maintained upon a Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or relandscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and

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specifications have been received by it, the plans and specifications shall be deemed disapproved. Declarant shall have the right to charge a reasonable fee, not to exceed \$150.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Community.

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

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

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

ARTICLE X USE RESTRICTIONS

Section 1. Land Use and Building Type. Except as specifically provided herein, Lots shall be used for residential purposes only. Except as permitted by the City, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Owners, real estate brokers and their agents may show Lots and homes for sale or lease. Notwithstanding the foregoing, the Declarant shall have the right to and may, in writing, permit another Person to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Community and the sale and construction of homes therein; (ii) Maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; and (iii) conduct any other activities on Lots to benefit development, sales and construction efforts.

Section 2. Building Setbacks; House Location. No Dwelling shall be erected or Maintained on any Lot outside of the building envelope required by the zoning ordinance of the City (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the Dwelling only to the extent that the same are deemed to be part of the Dwelling under the Zoning Ordinance as it exists as of the date of issuance of a

certificate of occupancy for such Dwelling. Any Dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a Dwelling may be erected so as to face either street or the intersection of the two streets on which the Lot abuts.

Section 3. Fences. Any fence or wall installed within the Community must meet all requirements of the Zoning Ordinance and must be approved as provided in Article IX of 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 or Lots or to any fence installed by the Declarant at any entrance to or along any street within the Community.

Section 4. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 5. Parking; Driveways and Parking Pads; Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or Maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall be approved as provided in Article IX hereof.

No mobile house trailer (whether on or off wheels), recreational vehicle, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Community. No boat, boat trailer, or any other trailer shall be parked on any street within the Community. A boat, boat trailer, or other trailer may be parked or kept on a Lot if it is parked or kept in the garage or approved out-building (and the door of the garage or out-building can close completely) or otherwise in such a manner that the boat and trailer are screened from the street, the Common Property, and other Lots. Screening may include an approved fence and plantings, but, in any case, the screening must comply with the Zoning Ordinance and be approved pursuant to Article IX of this Declaration.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Community or the Common Property, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Vehicles without current registration and inspection stickers are considered abandoned or inoperative.

Section 6. 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 ordinary 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 has the right, in its sole and absolute discretion, 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 the Common Property at any time except as permitted by the rules and regulations of

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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, street right of way, or the Common Property.

Section 7. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Property, nor shall anything be done thereon 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 8. Signs. Except as otherwise required by the City, 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, not more than one (1) sign of not more than six (6) square feet advertising the property for sale or rent, and not more than three (3) signs of not more than four (4) 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 forty-five (45) days before such election and shall be removed within seven (7) days after such election. No sign of any kind shall be displayed on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and Maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 9. Antennas; Satellite Dishes. 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 unless approved in accordance with Article IX hereof, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, §1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and Maintenance of antennae.

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

Section 10. Swimming Pools. No above-ground swimming pools are permitted in the Community, except that small, inflatable wading pools shall be permitted in the back yard of a Dwelling.

Section 11. Mailboxes. No mailbox, other than community standard mailboxes specified by the Declarant, shall be placed or Maintained on any Lot unless the same has been approved in accordance with the provisions of Article IX of this Declaration.

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Section 12. Maintenance of Lots and Improvements; Construction. As more fully provided in this Declaration, each Owner shall keep his Lot, including, but not limited to, plantings, landscaping and lawns, in a neat and attractive condition and shall keep the improvements thereon in a suitable state of repair. If an Owner fails to comply with this provision, the Declarant or the Association may remedy such non-compliance and the Owner of such Lot shall be responsible for all costs of bringing the Lot into compliance with this provision. Any such costs shall be deemed a special assessment against the Lot.

In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within nine (9) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape the area on which the structure stood or repair or reconstruct the structure.

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

Section 13. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the principal building in such a manner as not to be visible from the street upon which the principal building fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to an approved enclosure the night of the scheduled pickup. Trash containers used by the Declarant or, with the approval of the Declarant during construction are exempt from this provision.

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 Community.

Section 14. Restrictions on Rental of Dwellings. It is the intent of the Declarant that all Dwellings within the Community are intended for use and occupancy by the Owner of the Dwelling. Accordingly, and notwithstanding anything to the contrary herein, the term

“residential” as used in Section 1 of this Article specifically excludes the leasing of Dwellings in any one or more of the following instances:

- (a) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and has no future intent to do so;
- (b) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and who enters into a lease with a tenant that gives the tenant the option to purchase the Dwelling during, or at the end of, the term of the lease; or
- (c) by an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence.

Notwithstanding the foregoing restrictions on leasing of Dwellings, during the Declarant Control Period, Declarant, at its option, may (i) sell a model home or sales center to a third party and lease the same from such Owner during back lease the Dwelling, provided that such model home is not used as a residence, or (ii) lease the Dwelling on any Lot owned by Declarant.

Section 15. Waiver of Violations. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article IX of this Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Registry.

Section 16. Street Lighting. Declarant reserves the right to subject the Community to a contract with Progress Energy for installation and operation of street lighting, which requires a continuing monthly payment to Progress Energy by each residential customer or by the Association.

ARTICLE XI GENERAL PROVISIONS

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

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

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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 or amended by a vote of eighty percent of the Members.

This Declaration may be amended only in strict compliance with this Section and the Act, including, without limitation, §47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. This Declaration may also be amended by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the votes in the Association and, during the Declarant Control Period by the Declarant; provided, however, that in no event may Declarant's rights hereunder may be amended or altered without Declarant's prior written consent. For the purpose of this section, additions to existing property as provided in Section 2 of Article II hereof shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of the Owners or other Person, may amend this Declaration during the Declarant Control Period, provided such amendment is not expressly prohibited by the Act, and further provided that such amendment does not adversely affect the title to any Lot nor materially alter or change any Owner's right to the use and enjoyment of his Lot or the Common Property.

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

Section 3. Subdivision of Lots. No Lot within the Community may be subdivided by sale or otherwise so as to increase the total number of Lots in the Community, except with the consent of the Declarant during the Declarant Control Period, and thereafter of the Association, and, if required, by the City.

Section 4. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Property and 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 other 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 special assessment and a lien upon the Lot of the violator, and suspension of the right

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to vote and the right to use any recreational facilities within the Common Property; provided, however, that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

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 Common Property 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 right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

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

Section 5. Condemnation/Casualty. If all or any part of the Common Property and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements 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 Common Property 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.

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

CERTIFICATE OF THE SILVER LAKE
MASTER ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the Silver Lake Master 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 [describe 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 include 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 any 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 law, 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 this Declaration and the Articles of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control. In the event of any conflict between this Declaration and any Sub-Association Declaration, 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. §55A), and the ordinances of the City shall in all cases control 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. Rules 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 §47-F-2-102(1) of the Act.

Section 13. Declarant. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant and construction of homes by Declarant so long as said development and construction follow the general plan of development previously approved by the City. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping construction trailer, model home, or other temporary or permanent improvement installed by or with the approval of Declarant.

Section 14. Non-Discrimination. Neither the Association, the Board, committee of the Board, officer of the Association, nor any member of the Board or committee, in exercising its/his/her rights and obligations under this Master Declaration or the Articles of Incorporation or Bylaws or Articles of Incorporation of the Association, shall discriminate against any person on the basis of the race, color, religion, national origin or handicap of such person.

Section 15. Security Measures. Neither the Association nor the Board shall have any responsibility for establishing or Maintaining any security measures within the Property, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Raleigh Police Department.

Section 16. Hazardous Substances. Declarant hereby informs all Owners and other Persons who may from time to time deal with or come in contact with the Properties, that as stormwater drains from the Properties or other properties into any of the Stormwater Control Measures for the Properties, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances" or other regulated substances or materials under Legal Requirements relating to the environment, may flow through and/or accumulate in such Stormwater Control Measures. Accordingly, each Owner and other Person assumes the risk that such flowing through and/or accumulation may occur. In addition, each Owner further acknowledges that if it becomes necessary (as determined by Legal Requirements or by the Board) for such substances to be removed from the Stormwater Control Measures or otherwise handled in accordance with Legal Requirements, and for such Stormwater Control Measures to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common Expenses, and that an additional stormwater assessment may be required to pay for such removal and/or resultant clean-up of the Stormwater Control Measures.

Section 17. Reservoir Watershed Protection Area Overlay District. Certain portions of Properties are within a Watershed Protection Overlay District and, therefore, may contain natural resource buffer yards. No use, encroachment, land disturbing activity, placement of impervious surface, clearing, construction, or installation shall occur except in compliance with the provisions of Sections 10-9040-9043, inclusive, of the Code. Within those portions of the Properties shown on the Official Zoning Map of the City as "Watershed Protection Overlay District", no Lot shall contain impervious surface exceeding the requirements of Section 10-5006 of the Code.

**ARTICLE XII
RALEIGH CITY CODE REQUIREMENTS**

**PART A
DEFINITIONS AND GENERAL REQUIREMENTS**

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

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

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

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

(d) "Association" is the Silver Lake Master Association, Inc., a nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties. There may be one or more Sub-Associations (if applicable) with respect to the Properties. An example of a Sub-Association is a

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property Owners association for a Townhouse development that is part of a cluster unit development which has an Association for the cluster unit development. All references herein to an Association that is, in fact, a Sub-Association, are deemed corrected accordingly.

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

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

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

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

- (1) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);
- (2) Stormwater Control Measures;
- (3) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;
- (4) any site or facility designated a common area, common property open space, open space common area, amenity area, or other similar designation on any recorded plat or map of the Properties, or in this Declaration;
- (5) any Code-required shared facility or Open Space for the Properties, except for Open Space owned by the City;
- (6) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public Maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the Association in connection

- with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and
- (7) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers; and
- (8) Tree Conservation Areas required by Legal Requirements to be Common Area.

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

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

- (1) All sums lawfully assessed by the Association against its Members;
- (2) Expenses of the Common Area and administration, inspection and Maintenance of the Common Area;
- (3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;
- (4) Expenses for acquisition, Maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;
- (5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (6) Ad valorem taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;

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- (7) Fees or charges for utilities used in connection with the Common Area;
- (8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (9) Allocations to reserve funds;
- (10) Payments owed to the City pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant;
- (11) Fees for services engaged by the Association;
- (12) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity;
- (13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and
- (15) Expenses agreed by the Members to be Common Expenses of the Association.

(j) "Declarant" is defined as **M/I HOMES OF RALEIGH, LLC**, a Delaware limited liability company, and its successors and assigns.

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

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

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

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

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

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

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

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

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

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

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

(v) "Open Space" is defined as open space areas shown on preliminary subdivision plans filed with the City and delineated on any recorded plat of the Properties or the open space areas required by the Code or by the conditional use zoning of the Properties or Tree Conservation Areas shown on the maps recorded in the Registry in Book of Maps 2006, Pages 1597-1605, inclusive, for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by the Association, a Sub-Association, or by the City. Open Space owned by the Association or a Sub-Association is Common Area or Sub-Association Common Area, as appropriate.

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

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

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

(z) "Properties" is defined as all of the real property subject to any part or all of the terms of this Declaration. The amount of acreage of the Properties at the time of the recording of this Declaration is 22.7926 (gross) acres.

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

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

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

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

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

Section 3. Conflicts.

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

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

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

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

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

Section 5. Assessments.

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

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

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

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

Notwithstanding the provisions Section 3 of Article V hereof, for calendar year 2008, the annual assessment for each Class A Lot shall be Seven Hundred Fifty Dollars (\$750.00). The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such

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notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

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

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

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

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

(f) Declarant's Obligation to Fund Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant,

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

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

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

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

Section 6. Membership and Governance.

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

(b) Members' Rights of Use. Each Member and lawful occupant in the Properties shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right of ingress and egress to and from all Common Areas throughout the Properties, subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act. But, the right of access and support, the right to drain stormwater

and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

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

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

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

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

Section 8. Tree Conservation. The Association shall have a conservation easement for the planting of trees and for the protection and Maintenance of the trees situated within any tree conservation areas shown on any recorded plat of the Properties. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in tree conservation areas or in permanently protected undisturbed open space areas shown on recorded plats of the Properties without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the City and of the Association, enter tree conservation areas to perform active tree protection measures (as

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defined in the Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees, provided, however, that Association consent shall not be required, unless otherwise required by other provisions of this Declaration or Governing Documents, if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 18. Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to

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replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one-hundred and eighty days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

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

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

Section 2. Creation of Stormwater Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who maybe designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2008, the Stormwater Assessment is \$400.83 per Lot, consisting of (i) \$73.73 for the payment to the General Replacement Account held by the City for Pond 1 (ii) \$58.46 for the payment to the General Replacement Account held by the City for Pond 2, and (iii) \$50.70 for annual inspections and Maintenance, liability insurance, and sediment removal for the such Stormwater Control Measures, all as set forth in that certain Stormwater Management Operations and Maintenance Manual and Budget For Silver Lake Subdivision, Raleigh, North Carolina, recorded in the Registry as Exhibit C to the Stormwater Agreements for the first phase of the Subdivision, and (iv) \$217.94 for the payment to the escrow account set forth in Section 15(c) of Article V hereof. The amount of the Stormwater Assessment for the Lots subjected to this Declaration at the time of recording may change as Annexed Property is added to the Subdivision and made subject to this Declaration. Such changes shall be set forth in the Annexation Declaration annexing such Annexed Property. Stormwater Assessments shall commence with respect to each Lot on the later of the date on which this Declaration or applicable Annexation Declaration is recorded or the date on which a plat is recorded establishing the Lot.

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The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and Maintenance budget for the Stormwater Control Measures as set forth in the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, and any replacement contribution payment owed to the City pursuant to the Stormwater Agreement. The Association shall honor its obligations under the Stormwater Agreement, and the Association shall assess the Stormwater Assessment. The Declarant and each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association. No vote of the Owners is required to levy, collect, or foreclose a Stormwater Assessment. Stormwater Assessments shall be paid to the Association at the same time annual assessments are due.

In the event of nonpayment of any Stormwater Assessment for a period of thirty (30) days or longer after the payment due date, such Stormwater Assessment, together with interest at a rate not to exceed the highest rate allowed by North Carolina law), as computed from the date the delinquency first occurs, late charges, and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land upon the filing of a claim of lien, in the manner provided in G.S.47F-3-116(g), in the office of Clerk of Superior Court in the County in which the Lot is located and shall be a continuing lien upon each Lot against which the assessment is made until paid in full. The lien may be foreclosed in accordance with North Carolina law, or in any other manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Stormwater Assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. In such instances, such unpaid assessments shall be deemed Common Expenses collectible from all Owners, including the new Owner.

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

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

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

(a) to pay the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve funds, under any Stormwater Agreement, including Maintenance of the Stormwater Control Measures in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater

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Agreement as an exhibit, so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code, applicable regulations and rules and directives of the City;

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

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

Section 4. Assignment of Collection Rights and Lien Rights the City. Pursuant to the Stormwater Agreement and G.S.47F-3-102(15) of the Act, the Association has assigned to the City its rights to collect Stormwater Assessments, its rights to file liens against the Lots, and the right to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement. The Association shall have a license to collect Stormwater Assessments, to file liens against the Lots, and to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement until such time as the City notifies the Association in writing that it has elected to exercise its right to collect Stormwater Assessments, to file liens against the Lots, and/or to foreclose on those liens for monies owned by the Association to the City pursuant to the Stormwater Agreement. Declarant hereby irrevocably authorizes and directs each Owner to rely upon any written notice sent to such Owner by the Association that the City has elected to exercise its rights hereunder and thereafter to pay Stormwater Assessments directly to the City without any obligation or right to inquire otherwise until such time such Owner receives written notice from the City to pay the Stormwater Assessments directly to the Association. As the assignee of the Association's collection and lien rights, upon the filing of a claim of lien by the City, any such lien may be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Articles 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the office of the clerk of superior court of the county in which the Lot is located; which claim of lien shall state the description of the Lot(s) encumbered by the claim of lien, the name and address of the Association and of the City, the record Owner(s) of the encumbered Lot(s) at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be filed any time after a period of thirty (30) days or longer of default and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is filed, plus late charges, interest at the rate set forth in the Stormwater Agreement, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorney's fees. Any lien claim filed by the City shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Addition of Land. The maximum amount of land that can be added to the cluster unit development is as follows: 23.96 acres.

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

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(a) maximum number of dwelling units allowed in the cluster unit development is 249.

(b) maximum number of dwelling units per acre allowed in the cluster unit development is: six (6) units per acre.

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

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

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

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

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

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

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

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


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

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

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

DECLARANT:

M/I HOMES OF RALEIGH, LLC,
a Delaware limited liability company

By: 
Edward F. Kristensen, Area President

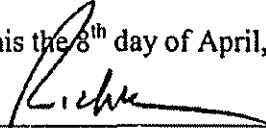
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STATE OF NORTH CAROLINA – COUNTY OF WAKE:

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that **Edward F. Kristensen** personally came before me this day and, being personally known to me, acknowledged that he is Area President of **M/I HOMES OF RALEIGH, LLC**, a Delaware limited liability company, and that he, as Area President, being authorized to do so, executed the foregoing on behalf of the limited liability company.

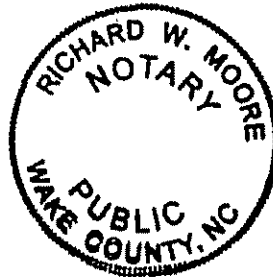
Witness my hand and official stamp or seal, this the 8th day of April, 2008.

(Notary Stamp or Seal)



Notary Public
Print Name: Richard W. Moore

My commission expires: 06/17/2009



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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, containing 22.7926 acres (gross), shown and described on the maps entitled "Subdivision Plat, SILVER LAKE SUBDIVISION, A CLUSTER DEVELOPMENT" recorded in Book of Maps 2008, Pages 658-661, inclusive, Wake County Registry, to which maps reference is hereby made for a more particular description, SAVE AND EXCEPT the rights-of-way of public streets shown thereon.

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EXHIBIT B

ADJACENT PROPERTIES

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

Parcel 1: PIN # 0782-07-9265 - Property of John W. Gensinger. All of the real property acquired by John W. Gensinger by deed recorded in Book 2566, Page 40, Wake County Registry.

Parcel 2: PIN # 0782-07-3253 - Property of John William Gensinger and Edward Thomas Vargo. All of the real property acquired by John William Gensinger and Edward Thomas Vargo by deed recorded in Book 4900, Page 24, Wake County Registry.

Parcel 3: PIN # 0782-07-1153 - Property of Jerry Paul Pritchard. All of the real property acquired by Jerry Paul Pritchard by deed recorded in Book 2627, Page 755, Wake County Registry, and being all of Tract 2, containing 3.89 acres, more or less, as shown on the map recorded in Book of Maps 1978, Page 381, Wake County Registry.

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BOOK:013043 PAGE:02443 - 02502

**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
60 # of Pages