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**Angie Cannady**
**Sivica Communities**
**1165 Sanctuary Parkway, Suite 450**
**Alpharetta, GA 30004**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

# Heritage at New Riverside

NOTE: THIS INSTRUMENT IS BEING EXECUTED FOR RECORDING IN BEAUFORT COUNTY, SOUTH CAROLINA. THE PROPERTY DESCRIBED IN EXHIBITS "A" AND "B" ARE LOCATED IN BEAUFORT COUNTY, SOUTH CAROLINA.

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# HERITAGE AT NEW RIVERSIDE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the date set forth on the signature page hereof by Riverwalk Property Development, Inc., a Georgia corporation (the "Declarant").

Declarant is the owner of the real property described on Exhibit A, which is attached and incorporated by reference or if Declarant is not the owner, such owner has consented to this Declaration. This Declaration imposes upon the Properties, as defined herein, mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Heritage at New Riverside Community Association, Inc., to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (capitalized terms are defined in Article 1 below).

Declarant hereby declares that all of the property described on Exhibit A and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions set forth herein, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

The Properties are located within that master development known as New Riverside ("New Riverside"), and are subject to that certain Declaration of Covenants, Conditions and Restrictions for New Riverside by New Riverside, LLC, dated December 15, 2004, filed December 30, 2004, recorded in Book 2076, Page 979, Records of Beaufort County, South Carolina, as amended (the "Master Declaration"). The terms, restrictions and obligations contained in the Master Declaration are incorporated herein by reference. Declarant hereby declares that the Declaration is intended to be a "Neighborhood Declaration" as set forth in Section 1.3 of the Master Declaration, and Declarant further declares that Heritage at New Riverside Community Association, Inc., is intended to be a "Neighborhood Association" as set forth in Section 1.3(a) of the Master Declaration.

This document does not and is not intended to create a condominium nor a property owners' development within the meaning of South Carolina law.

## ARTICLE 1: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Additional Property": All of that certain real property which is more particularly described on Exhibit "B", which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2. "ARB": The Architectural Review Board, as described in Section 9.2.

1.3. "Area of Common Responsibility": The Common Area, together with any additional areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or other applicable covenant, contract, or agreement.

1.4. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Heritage at New Riverside Community Association, Inc., as filed with the Secretary of State of the State of South Carolina.

1.5. "Association": Heritage at New Riverside Community Association, Inc., a South Carolina nonprofit corporation, its successors or assigns.

1.6. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under South Carolina corporate law.

1.7. "Builder": Any Person who purchases one (1) or more Units for the purpose of constructing improvements thereon for later sale to consumers or who purchases one (1) or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Unit for residential purposes shall cease to be considered a Builder with respect to such Unit immediately upon occupancy of the Unit for residential purposes, notwithstanding that such Person originally purchased the Unit for the purpose of constructing improvements for later sale to consumers.

1.8. "By-Laws": The By-Laws of Heritage at New Riverside Community Association, Inc., attached as Exhibit "C," as they may be amended.

1.9. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a Majority of the members of the Board of Directors as provided in Section 3.2.

1.10. "Commercial Unit": Any Unit which is not restricted exclusively to residential use and is designated as "Commercial" by the Declarant.

1.11. "Common Area": All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners, including all roadways located on the Properties not dedicated to a governmental entity (subject to the regulations and rules of the Association, and any exclusive uses as provided herein). The term also shall include any Exclusive Common Area, as defined below.

1.12. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any

reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members holding a Majority of the total Class "A" votes of the Association.

1.12.1 ACommunications Infrastructure@ shall mean equipment, facilities, wiring, conduit and other infrastructure, systems and appurtenances related to the provision of Communication Services.

1.12.2 "Communications Services@ shall mean telephone and other voice services, video and cable television services, internet access and intranet and other computer-related services, home security services, and other communications, data and information services.

1.13. "Community": That certain real property described in Exhibit 'A' attached hereto, and such additions thereto as may by made by Supplementary Declaration as provided herein.

1.14. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. The Community-Wide standard shall meet the minimum standards established by the Design Guidelines, rules and regulation of the Association or Board resolutions, whichever is the highest standard. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the ARB.

1.15. "Condominium Unit": Any portion of the Properties which may be independently owned and conveyed for occupancy and which constitutes or will constitute, after the recording of a declaration of condominium, a unit as defined in the declaration of condominium. The ownership of each Condominium Unit shall include an appurtenant interest in the common elements of the condominium. The ownership of each Condominium Unit shall include, and there shall automatically with the title to each Condominium Unit as an appurtenance thereto, whether or nor separately described, membership in the Association and all rights and interest of an Owner in the Common Property, as herein provided.

1.16. "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Properties, for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property.

1.17. "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.18. "Declarant": Riverwalk Property Development, Inc., a Georgia corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit A for the purpose of development and/or sale and who is designated as the Declarant in writing by the immediately preceding Declarant; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

1.19. "Design Guidelines": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.20. "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration or any Additional Property or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.21. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Subneighborhoods or Units, as more particularly described in Article 2.

1.22. "General Assessment": Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.23. "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.

1.24. "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land which is part of the Lot as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, single-family detached houses on separately platted Lots, as well as vacant land intended for development as such, but shall not include Common Area, common property owned by the Association, property designated by Declarant as commercial or mixed use or property dedicated to the public.

In the case of an unplatted parcel of land in a portion of the Properties designated for residential use by the Declarant, the parcel shall be deemed to be a single Lot until such time as a subdivision plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this Section.

1.25. "Master Plan": The land use plan or development plan for Heritage at New Riverside, prepared by Thomas & Hutton Engineering Company as such plan may be amended form time to time, which plan includes the property described on Exhibit A and all or a portion of the Additional Property described on Exhibit B that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit B from the Master Plan bar its later annexation in accordance with Article 7.

1.26. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.27. "Member": A Person subject to membership in the Association pursuant to Section 3.2.

1.28. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.29. "Mortgagee": A beneficiary or holder of a Mortgage.

1.30. "Neighborhood and Subneighborhood": The term "Neighborhood" shall mean all Properties, as defined herein, as they relate to the master development known as New Riverside. "Subneighborhood" shall have the meaning of a separately developed area within the Properties, whether or not governed by a Subneighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. Subneighborhood boundaries may be established and modified as provided in Section 3.3.

Where the context permits or requires, the term Subneighborhood shall also refer to the Subneighborhood Committee, if any, (established in accordance with the By-Laws) or Subneighborhood Association, if any, (as defined below) having concurrent jurisdiction over the property within the Subneighborhood.

1.31. "Subneighborhood Assessments": Assessments levied against the Units in a particular Subneighborhood or Subneighborhoods to fund Subneighborhood Expenses, as described in Sections 8.1 and 8.4.

1.32. "Subneighborhood Association": Any condominium association or other owners association having concurrent jurisdiction with the Association over any Subneighborhood.

1.33. "Subneighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Subneighborhood or Subneighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Subneighborhoods(s).

1.34. "Owner": One (1) or more Persons who hold the record title to any Unit, including the Declarant and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.35. "Outparcel" or "Outparcels": Individually or collectively as the case may be, any fee simple parcel of the Properties created by the Declarant from the Properties, the size and dimension of which shall be established by the legal description in the conveyance from the Declarant to the fee owner. An Outparcel may also be established by Declarant by an Amendment to this Declaration by instrument in writing, executed and recorded by Declarant, which designates a parcel of land within the Property as an Outparcel.

1.36. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.37. "Properties": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.38. "Public Records": The Official Records of the Register of Deeds of Beaufort County, South Carolina or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.39. "Residential Unit": A Unit which is restricted exclusively to residential use. A Lot or Townhome Unit shall automatically be deemed as "Residential" without further designation as such by the Declarant; provided, however, Declarant may otherwise specifically designate such Lot or Townhome as a "Commercial" Unit. A Condominium Unit shall be designated as "Residential" or "Commercial", as applicable, by the Declarant.

1.40. "Special Assessment": Assessments levied in accordance with Section 8.5.

1.41. "Specific Assessment": Assessments levied in accordance with Section 8.6.

1.42 "Supplemental Declaration": An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Subneighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.43. "Townhome Unit" : Any plot of land within the Community and a Subneighborhood designated as "Townhome Subneighborhood", whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a townhome which will be attached by one or more party walls to another townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include, and there shall automatically pass the title to each Townhome Unit as an appurtenance thereto, whether or not separately described, membership in the Master Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

1.44. "Unit": A separate portion of the Properties which may be independently owned and conveyed, including, without limitation a Condominium Unit, a Townhome Unit, a Commercial Unit, or an Outparcel. Open space, entry features, and similar property owned in fee simple by a Subneighborhood Association shall cease to be Unit upon conveyance to the Subneighborhood Association.

## ARTICLE 2: PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Unit, subject to:

(a) This Declaration and all other Governing Documents;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;

(e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area and Exclusive Common Area pursuant to Section 4.3;

(f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;

(g) The right of the Board to permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(i) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(j) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.2; and

(k) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit; provided however, the Owner shall remain responsible for payment of all assessments and other charges.

2.2. Exclusive Common Area. Subject to any restrictions or limitations in the deed conveying property to the Association, certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units or Subneighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, roads, landscaped medians and other portions of the Common Area within a particular Subneighborhood or Subneighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Units to which the Exclusive Common Areas are assigned either as a Subneighborhood Assessment or as a Specific Assessment, as applicable.

Initially, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association, or in this Declaration, or any Supplemental Declaration and/or on the subdivision plat relating to such Common Area; provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Subneighborhoods during the Development Period. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of particular Units or a particular Subneighborhood or Subneighborhoods and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Members representing a Majority of the total Class "A" votes in the Association, including, if applicable, a Majority of the Class "A" votes within the Subneighborhood(s) to which the Exclusive Common Area is assigned, if previously assigned, and within the Subneighborhood(s) to which the Exclusive Common Area is to be assigned or reassigned.

The Association may, upon approval of a Majority of the Class "A" votes within the Subneighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Subneighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Subneighborhood Expenses or Specific Assessments attributable to such Exclusive Common Area.

2.3. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any Common Area or other portion of the Properties from Units will be preserved without impairment.

2.4. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.5. Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

2.6 Actions Requiring Owner Approval. The conveyance or mortgaging of Common Area, except in accordance with Section 4.2, shall require the prior approval of Members holding at least two-thirds (2/3) of the total Class "A" votes in the Association, including two-thirds (2/3) of the Class "A" votes held by Members other than the Declarant, if the U.S. Department of Housing and Urban Development is insuring the Mortgage on any Unit or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Unit. Notwithstanding anything to the contrary in Section 2.5 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

## ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(a) and in the By-Laws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.10. In any situation where there is more than one (1) Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a Majority of the members of the Board of Directors during the Class "B" Control Period which shall continue until the first to occur of the following:

(i) the date that the Declarant no longer owns any property in the Community and Declarant no longer has the right to unilaterally annex additional property as provided herein and a certificate of occupancy has been issued for each Unit in the Community.

(ii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

3.3. Neighborhood and Subneighborhoods. Every Unit shall be located within a Subneighborhood; provided however, unless and until additional Subneighborhoods are established, the Properties shall be the Neighborhood. The Declarant, in its sole discretion, may establish Subneighborhoods within the Properties by designation on Exhibit "A" to this

Declaration, a Supplemental Declaration, or a plat. During the Development Period, the Declarant may unilaterally amend this Declaration, any Supplemental Declaration, or any plat from time to time to assign property to a specific Subneighborhood, to redesignate Subneighborhood boundaries, or to remove property from a specific Subneighborhood.

The Units within a particular Subneighborhood may be subject to additional covenants and/or the Unit Owners may be members of a Subneighborhood Association in addition to the Association. However, a Subneighborhood Association shall not be required except as required by law. Any Subneighborhood which does not have a Subneighborhood Association may, but shall not be obligated to, elect a Subneighborhood Committee, as described in the By-Laws, to represent the interests of Owners of Units in such Subneighborhood. No Subneighborhood Association or Subneighborhood Committee shall be formed or otherwise established without the prior submission to and written approval of Declarant of all documents creating or establishing such Subneighborhood Association or Subneighborhood Committee, including without limitation, the submission of any declaration of condominium, articles of incorporation, by-laws and other organizational and governing documents.

Any Subneighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Subneighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Units within the Subneighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Unit to all Subneighborhoods receiving the same service), shall be assessed against the Units within such Subneighborhood as a Subneighborhood Assessment pursuant to Article 8 hereof.

## ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of South Carolina.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the Association shall reconvey to Declarant any portion of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.3. Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.22 of the By-Laws. Such sanctions may include, without limitation:

(a) imposing monetary fines which shall constitute a lien upon the Unit of the violator (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);

(b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;

(c) suspending an Owner's right to vote;

(d) suspending any Person's right to use any recreational facilities within the Common Area and any part of the Exclusive Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit; and

(e) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any occupant, guest or invitee of a Unit violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Unit that the violator is occupying or visiting.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy a Specific Assessment to cover all costs incurred in bringing a Unit into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment 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 action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, city, state and federal ordinances, if applicable, and permit local and other governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. During the Development Period, the Declarant may designate sites within the Properties for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

4.6. Indemnification. The Association shall indemnify every officer, director, ARB member, and committee member against all damages, liabilities, and expenses, including reasonable attorneys fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and South Carolina corporation law.

The officers, directors, ARB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, ARB members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, ARB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, ARB member or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and directors' and officers' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to Beaufort County, South Carolina, or to any other local, state, or federal governmental or quasi-governmental entity or to

any private utility company subject to such approval as may be required by Sections 2 - 6 and 12.4.

4.8. Security. Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including the dwelling and the contents of the dwelling, resulting from acts of third parties or acts of God, including without limitation, fires.

4.9. Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.10. Powers of the Association Relating to Subneighborhood Associations. The Association may veto any action taken or contemplated by any Subneighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also may require specific action to be taken by any Subneighborhood Association to fulfill its obligations and responsibilities under any Governing Document. For example, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Subneighborhood Association. If the Subneighborhood Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Subneighborhood Association and assess the Units within such Subneighborhood for any expenses incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment.

4.11. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or a Subneighborhood Expense, depending on whether the service or facility is provided to all Units or only the Units within a specified Subneighborhood. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may

arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include garbage collection, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.12 Communications Services Agreement. In addition to the rights granted to the Association under Section 4.7 above, the Association is specifically authorized to enter into contracts with any party, including the Declarant and any affiliates thereof, that possesses a valid easement, sub-easement or license to construct and operate Communications Infrastructure on the real property described on Exhibit A as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7 (the "Communications Properties"), and/or to provide Communications Services to the Association and/or the Owners and occupants of the Units located therein with respect to the use and enjoyment of the Communications Infrastructure by and/or the provision of Communications Services to Owners and occupants of the Units in those Subneighborhoods that are located in the Communications Properties. The Association may enter into bulk service agreements with any such party by which the use or enjoyment of particular Communications Infrastructure and/or a particular Communications Service is provided Owners of Subneighborhoods that are located in the Communications Properties, and, in addition, the service provider may offer various Communications Services at the option of particular Owners. The other party to any such agreement or contract with the Association, including the Declarant and affiliates thereof, may charge and collect from the Association and/or the Owners a reasonable fee for the provision of any such Communications Services and/or the use and enjoyment of the Communications Infrastructure. Any such fee may be a Common Expense which is assessed by the Association and payable pro rata by each Owner within the Communications Properties. Any such assessment by the Association will not require any approval by the Class AA@ Members. As an alternative, the Association may arrange for the charges for Communications Services and Communications Infrastructure to be billed directly to Owners by the provider(s) of such Communications Services and/or Communications Infrastructure. Each Owner that owns a unit located in the Communications Property covenants and agrees to pay all reasonable costs and expenses for the same, whether the same may be billed directly to such Owner or included in a Common Expense assessment by the Association. Each Owner located in the Communications Properties must pay for any Communications Services and/or the use and enjoyment of the Communications Infrastructure to the extent the cost thereof is included as a Common Expense assessment by the Association regardless of whether the Owner desires or uses such Communications Services or Communications Infrastructure. No such Owner shall be exempt from liability for such Common Expenses and related Association assessment (i) by reason of non-use of such Communications Services or Communications Infrastructure or (ii) if the Communications Services provided to such Owner are terminated for any period by reason of the failure of such Owner to pay when due any assessment for such Common Expenses. Any Association contract for Communications Services may require individual Owners or occupants of the Units to execute separate agreements directly with the service providers in order to receive specified Communications Services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or the occupant of a Unit, may result in termination of services provided to such Owner or occupant. Any such termination shall not relieve the Owner located in the Communication Properties of the continuing obligation to pay assessments for any

portion of the charges for such infrastructure or service that are assessed against the Owner as a Common Expense. The Association and each Owner acknowledges and agrees that use or enjoyment of Communications Infrastructure and/or provision of Communications Services may be subject to usage policies and minimal equipment requirements of the service providers with respect to the use, access and/or services provided, including with respect to home security services, the requirement for telephone service to permit communication between the security sensors and the monitoring provider. In addition, standard initiation service fees (installation charges) may be due by an Owner if the Owner requires the communications service provider to enter into their house for any connection services. The Association shall be responsible for fulfilling its obligations under any contract for the use and enjoyment of Communications Infrastructure and/or the provision of Communications Services, including any such contract entered into prior to the termination of the Class AB@ Control Period. Notwithstanding any other provisions of the Declaration, including without limitation Section 4.11, no modification or cancellation of a contract for the use and enjoyment of Communications Infrastructure and/or the provision of Communications Services entered into by the Association shall be made without the approval of the Class AB@ Member and seventy-five percent (75%) of the total voting interest of the Class AA@ Members, whether or not present at a meeting in person or by proxy.

## ARTICLE 5: MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need not be limited to:

(ii) all Common Area;

(iii) any irrigation system situated upon the Common Area;

(iv) all landscaping and other flora and all structures and improvements, including but not limited to any entry features, and sidewalks situated upon the Common Area;

(v) all furnishings, equipment and other personal property of the Association;

(vi) any landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, street lights, buffers, entry features, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

(vii) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or any contract or agreement for maintenance thereof entered into by the Association;

(viii) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and

be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(a) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association and during the Development Period the Declarant agree in writing to discontinue such operation.

(b) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Subneighborhood Association or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Subneighborhood Expense assessed as a Subneighborhood Assessment solely against the Units within the Subneighborhood(s) to which the Exclusive Common Areas are assigned or a Specific Assessment against the particular Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(d) The Association shall maintain, repair, and replace the landscaping and other flora within the front and side yards of each Unit within any Subneighborhood designated in the Governing Documents to receive such services. The "front and side yard" of each Unit shall be deemed to be that portion of the Unit located between the Unit boundary adjacent to the street and a line parallel with the rear of the dwelling located on such Unit, but exclusive of the dwelling itself and exclusive of any screened or fenced areas of such yard. All costs associated with such maintenance, repair and replacement shall be assessed as a Landscape Assessment pursuant to Section 8.3.2 herein. The Association's obligations pursuant to this subsection shall commence as to each Unit on the later of: (i) the date on which the Association is notified in writing that a

certificate of occupancy has been issued for a dwelling on such Unit; or (ii) the date on which such Unit has been conveyed to a Person other than a Builder.

(e) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, sprinkler and irrigation systems, landscaping and other flora, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Subneighborhood Association. Each Owner shall also maintain the driveway and mailbox serving his or her Unit and all landscaping located in the right-of-way immediately adjacent to the Owner's Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association plus a ten percent (10%) administration fee against the Unit and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its designee under this Section shall not constitute a trespass.

5.3. Subneighborhood's Responsibility. Upon resolution of the Board of Directors, the Owners of Units within each Subneighborhood shall be responsible for paying, through Subneighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Subneighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Subneighborhood and adjacent public roads, private streets within the Subneighborhood, regardless of ownership or the Person performing the maintenance; provided however, all Subneighborhoods which are similarly situated shall be treated the same.

Any Subneighborhood Association having responsibility for maintenance within a particular Subneighborhood pursuant to additional covenants applicable to such Subneighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Units within such Subneighborhood as provided in Section 8.6.

5.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association, any Owner nor any Subneighborhood Association shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5. Cost Sharing Agreements. Adjacent to or in the vicinity of the Properties, there may be certain residential, nonresidential or recreational areas, including without limitation retail or business areas which are not subject to this Declaration and which are neither Units nor

Common Area as defined in this Declaration (hereinafter "Adjacent Properties"). The owners of such Adjacent Properties shall not be Members of the Association, shall not be entitled to vote, and shall not be subject to assessment under Article 8 of this Declaration.

The Association may enter into one (1) or more Cost Sharing Agreements with the owners or operators of portions of the Adjacent Properties:

(a) to permit use of any recreational and other facilities located on the Common Areas by the owners or operators of such Adjacent Properties and their designees;

(b) to obligate the owners or operators of such Adjacent Properties to perform and/or share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties;

(c) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such Adjacent Properties, if any, which are used by or benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties; and/or

(d) to establish rules and regulations regarding the use of areas that benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties.

The owners or operators of such Adjacent Properties shall be subject to assessment by the Association only in accordance with the provisions of such Cost Sharing Agreement(s). If the Association is obligated to share costs incurred by the owners of such Adjacent Properties, such payments by the Association shall constitute Common Expenses of the Association unless the Cost Sharing Agreement(s) provide otherwise. The owners or operators of the Adjacent Properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

## ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance on any Area of Common Responsibility;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members;

(iii)Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv)Directors' and officers' liability coverage;

(v)Fidelity insurance covering all Persons responsible for handling Association funds; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed against all Units. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.6.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the metropolitan Atlanta area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of South Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Subneighborhood shall be for the benefit of the Owners of Units within the Subneighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(vi) an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(4) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(5) a cross liability provision; and

(6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. In the event of any insured loss, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and during the Development Period, the Declarant, decide within ninety (90) Days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Subneighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Subneighborhood Association (if any) for the Subneighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner thereof pursuant to Section 8.6.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall also apply to any Subneighborhood Association that owns common property within the Subneighborhood in the same manner as if the Subneighborhood Association were an Owner and the common property were a Unit. Additional recorded covenants applicable to any Subneighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Subneighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

## ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation by Declarant. Until twenty (20) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2. Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

7.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Subneighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

## ARTICLE 8: ASSESSMENTS

8.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time ("Assessments"). There shall be five (5) types of Assessments: (a) General Assessments as described in Section 8.2 to fund Common Expenses for the general benefit of all Units; (b) Subneighborhood Assessments for Subneighborhood Expenses benefiting only Units within a particular Subneighborhood or Subneighborhoods as described in Section 8.3; (c) Landscape Assessments as described in Section 8.3.2; (d) Special Assessments as described in Section 8.5; and (e) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments. The Units shall be divided into the following three classifications for purposes of determining Assessments: "Village", "Enclave" and "Estates". All Units in that certain property shown as "Phase 1A" on that plat recorded in Plat Book 112, Page 137, Records of Beaufort County, South Carolina, is designated as the Village. Classifications for additional Units in the Subneighborhoods shall be designated by supplements to this Declaration or by recorded plats which show the boundaries of the Units. The Declarant reserves the right to add classifications at its discretion. All Units in the same classifications shall be assessed at the same value (except for any Special Assessments or Specific Assessments which may be assessed specifically to certain Units and not others). The Assessments for each Unit shall be based upon the classification of a Unit within the Subneighborhood as either "Village", "Enclave" or "Estate".

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys fees, shall be a charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 8.7. Each

such assessment or charge, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment and any Subneighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by (i) non-use of any amenities (including, without limitation, any Communications Services), or the Common Area, including Exclusive Common Area reserved for such Owner's use, (ii) abandonment of his or her Unit, or (iii) any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Computation of General Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

General Assessments shall be levied equally against all Units subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year and any income expected to be generated from any Cost Sharing Agreement.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years and the treatment of such payment shall be made known to the membership, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year plus an additional five percent (5%) shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure. Units in the same Subneighborhood may have different General Assessments based on the classification of the Unit (Village, Enclave or Estate) per the terms of this Declaration.

Included in the General Assessment shall be an annual assessment for owed by the Neighborhood pursuant to the terms of the Master Declaration (the "Master Community Fee") . A portion of such sum shall be due as to each Unit and calculated for each Unit based on each Unit's classification, The amount of the Master Community Fee is set from time to time by Heritage at New Riverside Community Association, Inc., and is subject to change.

8.3.1 Computation of Subneighborhood Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Subneighborhood Expenses for each Subneighborhood on whose behalf Subneighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Subneighborhood Assessment. Any Subneighborhood may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 3.3, any additional costs shall be added to such budget. Such budget may include a contribution establishing a reserve fund for repair and replacement of capital items maintained as a Subneighborhood Expense, if any, within the Subneighborhood.

Subneighborhood Expenses shall be allocated equally among all Units within the Subneighborhood(s) benefited thereby and levied as a Subneighborhood Assessment; provided however, if so specified in the Supplemental Declaration applicable to such Subneighborhood or if so directed by petition signed by a Majority of the Owners within the Subneighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Subneighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Subneighborhood at least thirty (30) Days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a Majority of the Units in the Subneighborhood to which the Subneighborhood Assessment applies or, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Units in such Subneighborhood. This right to disapprove shall apply only to those line items in the Subneighborhood budget which are attributable to services requested by the Subneighborhood. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting. Units in the same Subneighborhood may have different Subneighborhood Assessments based on the classification of the Unit (Village, Enclave or Estate) per the terms of this Declaration.

If the Owners within any Subneighborhood disapprove any line item of a Subneighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Subneighborhood budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

All amounts which the Association collects as Subneighborhood Assessments shall be expended solely for the benefit of the Subneighborhood for which they were collected and shall be accounted for separately from the Association's general funds.

8.3.2 Computation of Landscape Assessments. Each Subneighborhood shall have Landscape Assessments associated with it. The Landscape Assessments are based upon the general costs of maintenance and landscaping lots, and shall be set by budget and subject to change. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Landscape Expenses expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Landscape Assessment. The Board shall cause a notice of the amount of the Landscape Assessment for the coming year to be delivered to each Owner of a Unit at least thirty (30) Days prior to the beginning of the fiscal year. Such budget shall become effective unless disapproved by Owners of a Majority of the Units to which the Landscape Assessment applies or, during the Development Period, by the Declarant. If such Owners disapprove of said budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Landscape Assessment for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. Units in the same Subneighborhood may have different Landscape Assessment based on the classification of the Unit (Village, Enclave or Estate) per the terms of this Declaration.

8.4. Reserve Budget. The Board may, in its sole discretion, annually prepare reserve budgets for both general and Subneighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general and Subneighborhood budgets reserve amounts sufficient to meet the projected needs of the Association.

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Units, if such Special Assessment is for Common Expenses, or against the Units within any Subneighborhood if such Special Assessment is for Subneighborhood Expenses. Special Assessments shall be allocated equally among all Units. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes allocated to Units which will be subject to such Special Assessment and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, garbage collection, intranet and similar services and facilities), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Units; and

(c) to cover costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments.

The Association may also levy a Specific Assessment against the Units within any Subneighborhood to reimburse the Association for costs incurred in bringing the Subneighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules; provided however, the Board shall give prior written notice to the Owners of Units in the Subneighborhood and an opportunity for such Owners to be heard before levying any such assessment.

8.7. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of South Carolina law), late charges in such amount as the Board may establish (subject to the limitations of South Carolina law), costs of collection and reasonable attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Declarant or the Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Unit owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the date which the Unit is conveyed to a Person other than a Builder or Declarant. With respect to any Unit owned by a Builder, assessments shall commence upon the earlier of (a) actual occupancy of such Unit, excluding any period that such Unit is being used exclusively as a model home, or (b) one (1) year after conveyance of such Unit to such Builder. The first annual General Assessment, if any, levied on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

8.9. Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Subneighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10. Exempt Property. The following property shall be exempt from payment of General Assessments, Subneighborhood Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility (unless otherwise provided for in such dedication or conveyance instrument);

(c) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open space for public benefit and held by such agency or organization for such recreational and open space purposes; and

(d) Property owned by any Subneighborhood Association, or by the members of a Subneighborhood Association as tenants-in-common, for the common use and enjoyment of all members within the Subneighborhood.

8.11. Capitalization of Association. Upon conveyance of title to a Unit to the first Owner, other than the Declarant or a Builder, or upon occupancy of a Unit by a Person other than a Builder or Declarant and upon resale of such Unit by each successor purchaser, an initiation fee shall be paid by or on behalf of the purchaser or occupant to the Association in an amount to be initially determined by the Association; provided, however, that the initiation fee may be increased at any time at the discretion of the Board of Directors. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Unit, or if the obligation to pay the initiation fee arises by virtue of occupancy of a Unit by a Person other than a Builder or Declarant, the initiation fee shall be paid immediately upon demand by the Association. Initiation fees shall be utilized for the working capital of the Association to cover operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

8.12. Default Interest Rate; NSF Checks; Late Fees. Except as otherwise provided in the Governing Documents, any assessment levied upon an Owner which is not paid within fifteen (15) Days after the date upon which it is due shall bear interest at the lesser of (a) the rate of 18% per annum; or (b) the maximum rate of interest permissible under the laws of the State of South Carolina. In addition, if any Owner pays any assessment (General, Special or Specific) with a check on an account that has insufficient funds ("NSF"), the Board may, in its sole discretion, demand that all future payments be made by certified check or money order along with imposing a reasonable processing charge. Finally, the Association may charge a delinquent Owner an administrative/late fee not to exceed fifty dollars ($50.00) for each installment due to the Association which is delinquent. Any payment received by the Association shall be applied first to any attorneys fees and other costs of collection, then to any interest accrued on the late installment, then to any administrative late fee and then to the delinquent assessment.

## ARTICLE 9: ARCHITECTURAL STANDARDS

9.1. General. No exterior structure or improvement, as described in Section 9.4, shall be placed, erected, installed or made upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit except in compliance with this Article, and with the prior

written approval of the ARB under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer, unless otherwise approved by the ARB in its sole discretion.

This Article shall not apply to the activities of the Declarant. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2. Architectural Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish an Architectural Review Board to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. The members of the ARB need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals.

The ARB shall consist of one (1) to five (5) persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and conveyed to Owners other than Builders and the Declarant and initial construction on each Unit has been completed in accordance with the Design Guidelines, the Declarant retains the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

9.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB and compliance with the Design Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the modification or removal of any structure previously approved once the approved construction or modification has commenced. The ARB is expressly authorized to

amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The ARB shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finished grade elevation, among other considerations.

In reviewing and acting upon any request for approval, the ARB shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The ARB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with the Design Guidelines.

In the event that the ARB fails to approve or to disapprove any application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 9.7.

Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, windows, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval.

9.4. Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of mailboxes; swing sets and sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools, gazebos or playhouses; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARB. The ARB may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(ii) Signs. No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the ARB, except (1) such signs as may be required by legal proceedings; and (2) not more than one (1) professional security sign of such size and location deemed reasonable by the ARB in its sole discretion. Unless in compliance with this Section, no signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any Unit, any structure or dwelling located on the Common Area or any Unit (if such sign would be visible from the exterior of such structure or dwelling as determined in the ARB's sole discretion).

The Declarant and the ARB reserve the right to prohibit signs and to restrict the size, content, color, lettering, design and location of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(iii) Tree Removal. No trees that are more than eight (8) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ARB; provided however, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the ARB. The ARB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed. The above requirements shall be in addition to, and not in lieu of, any requirements with respect to the removal imposed by any governmental authority.

(iv) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit; (2) approved decorative post lights; (3) pathway lighting; (4) street lights in conformity with any established street lighting program for the Properties; (5) a reasonable number of seasonal decorative lights during the usual and common season as determined by the ARB; (6) front house illumination of model homes; or (7) any additional lighting as may be approved by the ARB.

(v) Temporary or Detached Structures. Except as may be permitted by the ARB, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Unit. No mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

(vi) Accessory Structures. With the approval of the ARB, detached accessory structures may be placed on a Residential Unit to be used for a playhouse, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Unit. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the ARB, an accessory structure placed on a Unit shall be located only behind the dwelling as such dwelling fronts on the street abutting such Unit or in a location approved by the

ARB. All accessory structures shall be located within side and rear setback lines as may be required by the ARB or by applicable zoning law.

(vii) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(viii) Standard Mailboxes. The ARB reserves the right to approve the style, design, color and location prior to any original installation or replacement of any mailbox and may require the installation of a standard mailbox. Application shall be made to the ARB prior to installation or replacement. By accepting a deed to a Unit, each Owner agrees that the ARB may remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by Owner of such Unit, and all claims for damages caused by the ARB are waived.

9.5. Construction Period. After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. The initial construction of all structures must be completed within one (1) year after commencement of construction, unless extended by the ARB in its sole discretion. All other construction shall be completed within the time limits established by the ARB at the time the project is approved by the ARB.

For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB; (b) a building permit has been issued for the Unit by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the dwelling on the Unit.

9.6. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.7. Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.8. Limitation of Liability. The criteria and requirements established by the ARB for approval of architects, Builders and contractors are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect, Builder, or contractor. Owner's selection of an architect, Builder, or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect, Builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in

the future, against the ARB or the Declarant. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Association, the Board, the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the ARB or any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.9. Enforcement. The Declarant, any member of the ARB or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as required, any authorized agent of Declarant, the ARB or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant and the ARB by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the ARB, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Neither the ARB or any member thereof nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

## ARTICLE 10: USE RESTRICTIONS

10.1. General. This Article sets out certain use restrictions which shall be applicable to Units within the Community and shall be in addition to the covenants, conditions, restrictions, and easements set forth in this Declaration. Declarant reserves the right to set forth additional design and development guidelines and restrictions by Supplemental Declaration or written Guidelines executed by the Declarant.

10.2. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding a Majority of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

10.3. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.4. Leasing. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board. Except for leases for Commercial Units, unless otherwise provided by the Declarant or Board of Directors in writing, all leases shall have a term of at least six (6) months.

10.5. Residential Use. Unless otherwise designated and approved by the Declarant during the Development Period, or thereafter the Board, Residential Units may be used only for residential purposes of a single family and for ancillary business or home office uses. Residential Units shall be used only for residential, recreational, ancillary business or home office uses and for related purposes (which may include, without limitation, model homes, sales offices for Builders, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for the Declarant or the Association or related parking facilities) consistent with this Declaration and any Supplemental Declaration. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Residential Unit; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Residential Unit by clients, customers, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Residential Unit without the prior written consent of the Board. The terms "business" and "trade," as used in this Declaration, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis

which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Residential Unit, subject to the restrictions contained herein, shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

No garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a Residential Unit without the prior written consent of the Board.

10.6. Commercial or Mixed Use. At the sole discretion of the Declarant during the Development Period, certain Units may be designated as mixed use and contain both residential and commercial office or retail purposes or as Commercial Units and contain only commercial office or retail purposes; provided, however, that the following provisions shall pertain only to non-residential uses so permitted. Units deemed as mixed use or commercial shall be used only for such commercial office or retail purposes permitted by applicable zoning ordinance and land use restrictions, provided such commercial office or retail activity does not in the sole discretion of Declarant (a) constitute a nuisance or hazardous or offensive use, or (b) threaten the security or safety of other residents of the Community, as may be determined in the reasonable discretion of the Declarant during the Development Period or, thereafter, the Board; and, further provided, that the Owner or Occupant of the Unit notifies the Declarant during the Development Period or, thereafter, the Board, of the intended commercial office or retail activity prior to engaging in same. Commercial office or retail businesses may only receive customers and members of the public between the hours of 7:00 a.m. and 2:00 a.m. of the next morning; provided, however, that the Declarant, during the Development Period, or thereafter, the Board, reserves the right, in its sole discretion, to alter hours, at any time, as the circumstances might reasonably dictate. In addition, the following uses of Commercial Units are specifically prohibited: employment services for "day labor" or transient employees, cinema/movie theater, bowling alley, skating rink, amusement gallery, pool hall, massage parlor (except that this shall not prohibit the providing of massage in connection with a full service health spa or beauty salon), adult book store or adult video store, business which sells pornographic material, or any lewd purpose, video game room, industrial or manufacturing use, or amusement arcade. The Declarant further reserves the right to prohibit any uses of any Unit which it deems, in its sole discretion, to be incompatible with the Community-Wide Standard.

No public auction, moving sale, "going out of business sale", or similar activity shall be conducted upon a Commercial Unit without the prior written consent of the Board.

10.6. Occupancy of Unfinished Dwelling. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed.

10.7. Vehicles. With respect to Residential Units:

(a) Automobiles and non-commercial trucks and vans shall be parked in the designated striped parking areas, garages or in the driveways, if any, serving the Units unless otherwise approved by the ARB; provided however, the Declarant and/or the Association may designate certain on-street parking areas subject to reasonable rules. No automobile or non-

commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on sidewalks, walking trails, or unpaved Common Area except for public safety vehicles authorized by the Board.

(b) Recreational vehicles shall be parked only in the garages, if any, serving the Units or, with the prior written approval of the ARB, other hard-surfaced areas which are not visible from the street; provided however, guests of an Owner or occupant may park a recreational vehicle on the driveway serving such Owner's or occupant's Unit for a period not to exceed three (3) Days each calendar year. "Visibility" shall be determined by the ARB in its sole discretion. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, commercial trucks and commercial vans. Any recreational vehicle parked or stored in violation of this provision in excess of three (3) Days shall be considered a nuisance and may be removed from the Properties. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties unless otherwise approved by the Declarant or the ARB.

(d) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

10.8. Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association. With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

10.9. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All pets shall be reasonably controlled by the owner whenever outside a dwelling and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3.

10.10. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her

property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any structure on the Unit unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically.

The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

10.11. Storage of Materials, Garbage, Dumping, Etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be placed in appropriate containers at a designated location as directed by the Board from time to time and regularly removed and shall not be allowed to accumulate.

There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff.

Each Owner shall maintain its Unit in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash or debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Unit shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Units and shall not be buried or covered on the Unit. Any Unit on which construction is in progress may be policed prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Unit upon reasonable notice by Declarant in preparation for special events.

10.12. Combustible Liquid. There shall be no storage of gasoline, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.13. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed after a subdivision plat including such Unit has been approved and filed in the Public Records without the Declarant's prior written consent during the Development Period and the prior written consent of the ARB thereafter. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.14. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.15. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Unit. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Unit. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Units. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Unit.

(d) Use of any areas designated as "drainage easement areas" on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 9.

(e) No Person shall alter the grading of any Unit without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(f) All persons shall comply with any and all applicable federal, state, county and South Carolina Department of Natural Resources Environmental Protection Division erosion control ordinances or regulations in construction of improvements on any Unit and, where required, shall maintain silt fencing and vegetative and structural sediment control and collection devices.

(g) All persons shall comply with any and all applicable state or county ground disturbance laws, including, but not limited to Chapter 9 of Title 25 of the Official Code of South

Carolina Annotated, also referred to as the Call-Before-You-Dig law, specifically O.C.G.A. §25-9-6.

10.16. Irrigation. Owners shall not install irrigation systems which draw upon ground or surface waters nor from any streams within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.17. Open Spaces, Green Spaces, Parks, and Other Recreational Areas. Owners, as well as their families, tenants, guests, invitees, and pets, shall refrain from any actions on their Units which would deter from the enjoyment of areas within or adjacent to the Properties designated as "Open Spaces", "Green Spaces", "Parks", and/or "Recreational Areas". Prohibited activities shall include, but shall not be limited to, burning materials where the smoke will cross such areas, maintenance of dogs or other pets which interfere with the use of such areas due to their loud barking or other actions, and playing of loud radios, televisions, stereos or musical instruments.

10.18. Wetlands. All areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Unit, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

10.19. State Waters and Buffers. All areas identified on the Master Plan or any plat of the Properties as state waters or buffers and qualifying as such shall remain undisturbed and be left in their natural vegetative state. No areas delineated as state waters or buffers shall be disturbed unless approved in writing by the Board of Directors and the appropriate state governing authority, in accordance with any applicable state variance procedure.

## ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, and the Owners, and their successors-in-title.

11.1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units and between each Unit and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, internet provider, cable provider, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3. Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.4. Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Unit for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.5. Easements for Maintenance and Enforcement. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Unit, to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

11.6. Easement for Walking Trail Access. Declarant hereby grants to the Owners a perpetual, non-exclusive easement over and across any areas designated as "walking trails" or "paths" on any recorded subdivision plat of the Properties. Use of such walking trails or paths shall be governed by reasonable rules and regulations promulgated by the Association.

11.7. Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Unit shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.8. Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.9. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

11.10. Easements for Communications Infrastructure and the Provision of Communications Services. Notwithstanding any other provision of the Declaration, including without limitation the other provisions of this Article 11, the Declarant, for itself and its designees, successors and assigns, including affiliates thereof, reserves, creates, establishes, promulgates and declares a permanent, perpetual and private blanket easement upon, across, over, through and under all of the Communications Properties (including all Outparcels and Common Areas therein) for the purposes of constructing, installing, operating, maintaining, repairing, adding to, altering or replacing Communications Infrastructure and for the provision of Communications Services throughout the Communications Properties. The Declarant also reserves the right, for itself and its designees, successors and assigns, including affiliates thereof, (i) to grant and record easements, sub-easements and licenses throughout the Communications Properties to any party for such purposes, (ii) to deny access to the Communication Properties to the extent permitted by law, or to condition such access on negotiated terms, (iii) to install, maintain, repair, replace and remove, or to arrange for the installation, maintenance, repair, replacement and removal of Communications Infrastructure within any portion of the Communications Properties, including, without limitation, within any of the Common Areas, (iv) to provide or to arrange for the provision of Communications Services and/or the use and enjoyment of the Communication Infrastructure to the Association, Owners and occupants of the Units located in the Communications Properties, and (v) to enter into one or more agreements with the Association for the provision of Communications Services to and/or the use and enjoyment of the Communications Infrastructure by the Association, Owners and occupants of Units located in the Communications Properties.

For the greater of twenty (20) years or so long as the Class AB@ membership exists, the Declarant and its designees, successors and assigns, shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant would (A) modify (i) agreements with the Association for the provision of Communications Services to the Association, Owners and occupants of Units located in the Communications Properties, and/or (ii) agreements with the Association for the use and enjoyment of the Communications Infrastructure by the Association, Owners and occupants of Units located in the Communications Properties; or (B) tend to impair rights of providers of Communications Services and/or Communications Infrastructure on the Communication Properties. The Declarant, and its designees, successors and assigns, including affiliates thereof, may collect a reasonable fee for (i) any easements, sub-easements and licenses granted by any of them to any party for any of the purposes described in this Section, and (ii) the provision of Communications Services and/or the use and enjoyment of the Communications Infrastructure to the Association, Owners and occupants of Units located in the Communications Properties.

11.1 Roadway Access. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself, its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, and the Association, an access easement over all roadways and drives located within the Properties, for ingress and egress, subject to rules and regulation promulgated by the Association.

## ARTICLE 12: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) Days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

12.4. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development, so long as it is insuring the Mortgage on any Unit, or the U.S. Department of Veterans Affairs, so long as it is guaranteeing the Mortgage on any Unit: merger, consolidation or dissolution of the Association; annexation of additional property other than the Additional Property, dedication, conveyance or mortgaging of Common Area except in accordance with Section 4.2; or material amendment of this Declaration, the By-Laws or the Articles.

12.5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.6. Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or South Carolina law for any of the acts set out in this Article.

## ARTICLE 13: DECLARANT'S RIGHTS

13.1. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2. Development and Sales. The Declarant and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, such as sales activities and promotional events and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. The Declarant and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and Builders authorized by Declarant may establish within the Properties including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model homes, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

13.3. Improvements to Common Areas. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

13.4. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws or Articles. During the Development Period, Declarant may subject the Commercial Units or any areas

designated for mixed use to additional restrictions and covenants in Declarant's sole discretion and without obtaining the consent of any other Owners.

13.5. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Class"B" Member or the Declarant in the Governing Documents.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting.

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Class "B" Member, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Class "B" Member exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.6. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## ARTICLE 14: GENERAL PROVISIONS

14.1. Duration.

(a) Except as otherwise limited by South Carolina law, this Declaration shall have perpetual duration. If South Carolina law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by South Carolina law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Units within the Properties, which instrument is recorded in the Public Records; provided however, regardless of the provisions of South Carolina law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Units and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies with the requirements of O.C.G.A. §44-5-60(d) and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2. Amendment.

(a) By Declarant. The Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of submitting the Properties to the South Carolina Property Owners' Association Act, O.C.G.A. §44-3-220, et seq. (1994) and conforming this Declaration to any mandatory provisions thereof, and (ii) to correct scriveners' errors and other mistakes of fact, provided that amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendment shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes

held by Members other than the Declarant, and, during the Development Period, the written consent of the Declarant. In addition, the approval requirements set forth in Article 12.4 shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

14.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4. Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.5. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding seventy-five percent (75%) of the total Association vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.6. Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual Units conveyed by Declarant or its successor, but that the estates of the Declarant and individual Unit owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.7. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.8. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations applicable to any Subneighborhood, and the Association may, but shall not be required to enforce, the additional covenants, conditions and provisions applicable to any Subneighborhood; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and use restrictions and rules of the Association shall prevail or those of any Subneighborhood. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.9. Use of the "" Name and Logo. No Person shall use the words "Heritage at New Riverside" or the logo for Heritage at New Riverside or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Heritage at New Riverside" in printed or promotional matter where such terms are used solely to specify that particular property is located within Heritage at New Riverside and the Association and any other community association located in Heritage at New Riverside shall be entitled to use the words "Heritage at New Riverside" in their name.

14.10. Compliance. Every Owner and occupant of any Unit shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

14.11. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Unit shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.12. Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

31st IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this day of ~~June~~ May, 2006.

**DECLARANT**

Property
**Riverwalk Development, Inc.,**
a Georgia corporation

By: _____ [SEAL]

Name: J David Odom

President

Signed, sealed and delivered this 31st day of ~~June~~ May, 2006 in the presence of:

_____
WITNESS

_____
NOTARY PUBLIC

My Commission Expires:

[NOTARIAL SEAL]

ANGELA CANNADY NOTARY PUBLIC COBB COUNTY STATE OF GEORGIA EXPIRES 08-31-2009

**CONSENTED TO AND ACKNOWLEDGED BY:**

**MASTER DECLARANT**

**New Riverside, LLC**, a South Carolina limited liability company

By: _____ [SEAL]

Name: _____

Its: _____

Signed, sealed and delivered this _____ day of June, 2006 in the presence of:

_____
WITNESS

_____
NOTARY PUBLIC

**STATE OF GEORGIA** )
)
**COUNTY OF COBB** )

**ACKNOWLEDGMENT**

I, the undersigned Notary Public, do hereby certify that Riverwalk Property Development, Inc., a Georgia corporation, by J. David Odom, its President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 1st day of June, 2006.

ANGELA CANNADY COBB COUNTY NOTARY PUBLIC EXPIRES 08-31-2009 STATE OF GEORGIA

Angela Cannady (SEAL)
Notary Public for Cobb County GA
My Commission Expires 8/31/2009

{2006050291.00040813.DOC 2}

14.12. Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this ___ day of June, 2006.

**DECLARANT**

**Riverwalk Development, Inc.,**
a Georgia corporation

Signed, sealed and delivered this _____ day of June, 2006 in the presence of:

By: _____ [SEAL]

Name: _____

Its: _____

_____
WITNESS

_____
NOTARY PUBLIC

My Commission Expires:

[NOTARIAL SEAL]

**CONSENTED TO AND ACKNOWLEDGED BY:**

**MASTER DECLARANT**

**New Riverside, LLC,** a South Carolina limited liability company

Signed, sealed and delivered this 14th day of June, 2006 in the presence of:

By: William G. Peacher [SEAL]

Name: WILLIAM G. PEACHER

Its: GENERAL MANAGER / COO

Jeni Dawson
WITNESS

Margaret A. Crabtree
NOTARY PUBLIC
AUG. 16, 2014

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public, do hereby certify that New Riverside, LLC, a South Carolina limited liability company, by William G. Peacher, its General Manager/COO, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 15th day of June, 2006.

Margaret A. McClinton (SEAL)
Notary Public for Beaufort County, South Carolina
My Commission Expires:
AUG. 16, 2014

{2006050291.00041246.DOC}

IN WITNESS WHEREOF, the undersigned Owners hereby consent to the submission of their properties to the provisions of this Declaration this 31st day of ~~June~~ May, 2006.

Signed, sealed and delivered this 31st day of May, 2006 in the presence of:

WITNESS

NOTARY PUBLIC

My Commission Expires:

[NOTARIAL SEAL]

**OWNER**

**Lanier Apex Development, LLC,**
a Georgia limited ~~liability~~ company

By: _____ (SEAL)
J. David Odom, Manager

ANGELA CANNADY NOTARY PUBLIC Cobb County STATE OF GEORGIA EXPIRES 08-31-2009

Signed, sealed and delivered this 31st day of May, 2006 in the presence of:

WITNESS

NOTARY PUBLIC

My Commission Expires:

[NOTARIAL SEAL]

**OWNER**

**CP Apex, LLC,**
a Georgia limited liability company

By: _____ (SEAL)
T. Kevin Reece, Manager

ANGELA CANNADY NOTARY PUBLIC Cobb County STATE OF GEORGIA EXPIRES 08-31-2009

**STATE OF GEORGIA** )
)
**COUNTY OF COBB** )

**ACKNOWLEDGMENT**

I, the undersigned Notary Public, do hereby certify that Lanier Apex Development, LLC, a Georgia limited liability company, by J. David Odom, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 1st day of June, 2006.

ANGELA CANNADY COBB COUNTY NOTARY PUBLIC EXPIRES 08-31-2009 STATE OF GEORGIA

Angela Cannady (SEAL)
Notary Public for Cobb County, GA
My Commission Expires 8/31/2009

{2006050291.00040814.DOC 2}

**STATE OF GEORGIA** )
)
**COUNTY OF COBB** )

**ACKNOWLEDGMENT**

I, the undersigned Notary Public, do hereby certify that CP Apex, LLC, a Georgia limited liability company, by T. Kevin Reece, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 1st day of June, 2006.

ANGELA CANNADY COBB COUNTY NOTARY PUBLIC EXPIRES 08-31-2009 STATE OF GEORGIA

Angela Cannady (SEAL)
Notary Public for Cobb County, GA
My Commission Expires 8/31/09

IN WITNESS WHEREOF, the undersigned Owner hereby consents to the submission of their properties to the provisions of this Declaration this 13th day of June 2006.

Signed, sealed and delivered this 13th day of June, 2006 in the presence of:

WITNESS

WITNESS

**OWNER**

Sivica Homes – Heritage at New Riverside, LLC, a Georgia limited liability company

(SEAL)
By: Kyle Dempsey
Its: Manager

**STATE OF GEORGIA** )
)
**COUNTY OF DEKALB** )

**ACKNOWLEDGMENT**

I, the undersigned Notary Public, do hereby certify that Sivica Homes – Heritage at New Riverside, LLC, a Georgia limited liability company, by Kyle Dempsey, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 13th day of June, 2006.

(SEAL)
Notary Public for DeKalb County
My Commission Expires : 2/3/08

My Commission Expires:

[NOTARIAL SEAL]

**OWNER CONSENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE AT NEW RIVERSIDE**

WHEREAS, the undersigned entities are the owners ("Owners")and hold title in fee simple to a portion of the property described on Exhibit "A" attached hereto; and

WHEREAS, the undersigned Owners desire to subject their property to the provisions of this Declaration;

NOW, THEREFORE, the undersigned Owners hereby consent to the submission of their property to the provisions of this Declaration and does declare and agree on behalf of themselves and their successors, assigns and successors-in-title, that from and after the date of this consent, their property shall be owned, held, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in this Declaration, and shall be a part of the scheme of development for Heritage at New Riverside. The terms, provisions, covenants and restrictions contained in this Declaration shall run with the title to the property of the undersigned owners and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successor-in-title, and assigns.

[SIGNATURES OF CONSENTING OWNERS CONTINUED ON NEXT PAGE]

**EXHIBIT "A"**

**Land Initially Submitted**

**Legal Description – Heritage at New Riverside**

ALL those certain piece, parcels or tracts of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 368.95 acres, more or less and being shown as PARCEL 2 and PARCEL 3 on that certain plat entitled "PARCEL 2 AND PARCEL 3, A PORTION OF NEW RIVERSIDE" prepared by Boyce L. Young of Thomas & Hutton Engineering Co., SC RLS #11079, dated August 13, 2004, and recorded December 13, 2004, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 103 at Page 53.

**EXHIBIT B**

**Additional Property**

Any property located within five (5) miles of the perimeter boundary of the land described on Exhibit "A" attached hereto.

**EXHIBIT C**

**By-Laws of Heritage at New Riverside Community Association, Inc.**