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FILED IN GREENVILLE COUNTY, SC

**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS**

**FOR**

**THE TOWNES AT CARDINAL CREEK**

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS AND CHARGES DUE ON LOTS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS ON LOTS, PURSUANT TO THE PROVISIONS HEREOF.

After recording, please return to:  
Nelson Galbreath, LLC  
25 E. Court Street, Suite 201  
Greenville, SC 29601

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE TOWNES AT CARDINAL CREEK**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE TOWNES AT CARDINAL CREEK is effective as of November 19, 2012 by and among TCC Venture, LLC, a South Carolina limited liability company (as successor in interest to CNBA-SC, LLC, who was successor-in-interest by foreclosure deed to Cardinal Creek Townes, LLC, the "Declarant"), Cardinal Creek Constructors, LLC, a South Carolina limited liability company ("CCC"), South Carolina Bank and Trust ("SCBT") and Builders FirstSource-Southeast Group, Inc. ("Builders FirstSource").

**WITNESSETH:**

WHEREAS, an entity known as Cardinal Creek Townes, LLC ("CCT") acquired certain real property comprising approximately 18.13 acres known as "The Townes at Cardinal Creek" townhome development as evidenced by that certain deed recorded on March 28, 2006 in the ROD Office for Greenville County, South Carolina (Book 2196 at Page 1514)("Property").

WHEREAS, CCT recorded that certain Declaration of Covenants, Conditions, and Restrictions for The Townes at Cardinal Creek ("Declaration") relating to the Property on April 2, 2008 in the ROD Office for Greenville County, South Carolina in Book 2318 at Page 2009.

WHEREAS, on or about April 2, 2008, CCT sold lots 70-81 to CCC.

WHEREAS, on or about April 2, 2008, SCBT recorded a mortgage interest in Lots 70-81 in connection with construction financing to CCC.

WHEREAS, on or about March 20, 2009, CCC sold Lot 73 (Unit 322, Christiane Way, Greenville, South Carolina) to Angela M. Goodwin (Book 2355 at Page 1311) and South Carolina Bank and Trust released its mortgage lien on Lot 73.

WHEREAS, on or about October 21, 2011, all rights of CCT in and to the Property, including its rights as declarant under the Declaration, were deeded, transferred and assigned to CBNA-SC, LLC ("CBNA"), by virtue of a foreclosure deed (Book 2395 at Page 4281).

WHEREAS, on or about November 20, 2012, CBNA deeded, transferred and assigned to Declarant all of its rights in and to the Property (Book 2415, Page 972), including its rights as declarant under the Declaration (Book 2415 at Page 974).

WHEREAS, on or about November 20, 2012, CCC deeded, transferred and assigned to Declarant all of its rights in and to certain raw land within the Property (Book 2415, Page 1441).

WHEREAS, Declarant now desires, and each of the undersigned interested parties hereby consents, to amend, replace and supersede the Declaration under the terms of this Amended and Restated Declaration, effective as of the date of recordation;

NOW, THEREFORE, Declarant hereby declares, and each of the undersigned interested parties claiming an interest in the Property hereby approves, ratifies and consents to this Amended and Restated Declaration as follows: the Declaration is hereby deleted in its entirety and replaced by the following:

[Remainder of page intentionally left blank]

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**-TABLE OF EXHIBITS-**

<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Description of Land Submitted to the Declaration
"B"	Description of Additional Land that may in the future be submitted to the Declaration
"C"	By-Laws of The Townes at Cardinal Creek Homeowners' Association, Inc.



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THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE SOUTH CAROLINA HORIZONTAL PROPERTY REGIME ACT, §27-31-10, ET SEQ., SOUTH CAROLINA CODE OF LAWS.

## ARTICLE I

### Definitions

The terms used in this Declaration are intended to have their normal, commonly understood definitions, unless otherwise specified. To minimize repetition, some terms are capitalized to indicate that they have special definitions. Whenever used in their capitalized form, those terms have the following meanings:

**Additional Real Property**: That real property as described in **Exhibit B**, attached hereto and incorporated herein by this reference, together with interests appurtenant thereto that may be added unilaterally by the Declarant to the Community.

**Architectural Control Committee or ACC**: The committee that may be appointed by the Declarant or Board and serving at their pleasure to exercise the architectural review powers set forth in this Declaration.

**Common Property**: The Common Property, together with those areas, if any, which by the terms of this Declaration or by agreement with any other Person become the Association's responsibility to maintain.

**Articles or Articles of Incorporation**: The Articles of Incorporation of The Townes at Cardinal Creek Homeowners Association, Inc., which have been filed with the Secretary of State of the State of South Carolina.

**Assessments**: Shall have the meaning specified in Article V hereof that shall or may be levied by the Association against the Lots for the purpose of raising the funds necessary to pay the expenses of the Association.

**Association**: The Townes at Cardinal Creek Homeowners Association, Inc., its successors and assigns.

**Board or Board of Directors**: The body responsible for management and operation of the Association.

**Builder**: Any Person engaged principally in the business of constructing for sale to homeowners residential dwellings to whom the Declarant sells or has sold one (1) or more Lots for the purpose of constructing thereon a residential dwelling.

**Bylaws**: The Bylaws of The Townes at Cardinal Creek Homeowners Association, Inc., attached to this Declaration as **Exhibit C** and made a part of this Declaration.

**Common Expense**: Any expense incurred or anticipated to be incurred by the Association for the general benefit of the Community, including, but not limited to, any expense incurred for maintaining, repairing, replacing, and operating the Common Properties.

**Common Property**: Any and all real or personal property, easements, improvements or other interests in the Community as may be owned by the Association including, without limitation, landscaping, the entry feature, personal property or improvements whatsoever that are not the property of other Persons.

**Community or The Townes at Cardinal Creek or Land**: All that real property as described in **Exhibit A**, attached hereto and incorporated herein by this reference, together with interests appurtenant thereto and additions to such property as may hereafter be made by an amended or supplemental declaration.

**Community-Wide Standard**: The standard of conduct, maintenance, or other activity generally prevailing in the Community as may be more specifically determined by the Board or ACC that shall not be inconsistent with the Community-Wide Standard originally established by the Declarant.

**Declarant**: TCC Venture, LLC, a South Carolina limited liability company, or its successors-in-title who shall (a) acquire, from a predecessor Declarant, for the purpose of development or sale, all or any portion of the Land, and (b) be designated as the Declarant in a deed of conveyance to a successor in title or by written assignment of Declarant rights in an instrument recorded in the Greenville County, South Carolina records.

In all events there shall only be one Declarant at any one time; in no event shall more than one Person have the right to exercise the power and authority of the Declarant at any given time.

**Declaration**: That certain Declaration of Covenants, Conditions, and Restrictions for The Townes at Cardinal Creek recorded on or about April 2, 2008 in the ROD Office for Greenville County, South Carolina in Book 2318 at Page 2009 as amended hereby.

**Developer Control Period**: The period of time during which the Declarant, by virtue of its Class "B" membership, is entitled to appoint a majority of the members of the Board of Directors pursuant to the By-Laws.

**Effective Date**: The date that this Declaration is recorded in the Greenville County, South Carolina ROD Office.

**Governing Documents**: The Articles of Incorporation, the By-Laws, this Declaration, any applicable Supplemental Declaration, the Architectural Guidelines, the Restrictions and Rules, and Board resolutions, or any of them, as each may be amended from time to time.



**Lot:** Any plot of land in the Community, regardless of whether improvements are constructed thereon, which may constitute, after the construction of improvements, a single-family residence site as shown on a recorded Plat of the Land. Each Lot shall include all improvements located thereon (e.g., residence, driveway, garage, backyard area or patio).

**Majority:** The number of votes of an Owner or other Person, as the context requires, totaling more than fifty percent (50%) of the total number eligible to vote.

**Member:** A Person holding a membership in the Association pursuant to Article III, Section 1.

**Mortgage:** Any mortgage, deed to secure debt, or other similar instrument used to encumber real property as security for the payment or satisfaction of an obligation.

**Mortgagee or Mortgage Holder:** The holder of a Mortgage.

**Occupant:** Any Person occupying all or a portion of a residence located on a Lot regardless of whether such Person is a tenant or the Owner of such Lot.

**Owner:** The record owner, whether one or more Persons or the Declarant, of the fee simple title to any Lot located in the Community, but excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.

**Person:** Any natural person, association, trust, or legal entity.

**Plat:** The plat or plats of survey for The Townes at Cardinal Creek, as such may be revised from time to time, recorded in the land records of Greenville County, South Carolina, which are incorporated herein by reference thereto.

**Supplementary Declaration:** An additional amendment to the Declaration that subjects additional real Property to this Declaration or that amends the restrictions or obligations affecting the Land.

**Total Association Vote:** All votes attributable to members of the Association or the Declarant as provided for and subject to the terms of this Declaration.

## **ARTICLE II**

### **Property Subject to this Declaration; Conveyance and Partition of Common Property**

#### **Section 1. Property Subjected to this Declaration.**

By the recording of this Declaration, the real property or Land described in **Exhibit A** attached hereto is subject to the covenants and restrictions hereafter set forth and shall be held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to this Declaration. All of the terms, provisions, liens, charges, easements, covenants or restrictions set forth herein shall be appurtenant to and run with title to the Land or portion thereof.

## Section 2. Other Property.

Only the Land described herein is made subject to this Declaration. However, by one or more Supplementary Declarations, other real property may be subjected to this Declaration.

## Section 3. Conveyance of Common Property by Declarant to Association.

The Declarant may convey to the Association any real or personal property interest and subject such interest to the terms of this Declaration. Such conveyance shall be accepted by the Association, and such property shall be Common Property to be maintained by the Association pursuant to the terms of this Declaration. Any property interest conveyed by Declarant shall be without recourse to Declarant including warranty as to fitness of purpose or obligation to repair.

## Section 4. Partition of Common Property.

The Common Property shall remain undivided, and no Owner or Person shall bring an action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and Mortgagees.

# ARTICLE III

## Association Membership and Voting Rights

### Section 1. Membership.

(a) Qualification. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation. All co-Owners of a Lot shall be jointly obligated to perform the responsibilities of the Owner of the Lot, and any one co-Owner may be held fully responsible for all such obligations. The membership rights of an Owner which is a corporation, partnership, trust, or other entity may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary.

(b) Classes. The Association initially shall have two classes of membership, Class "A" and Class "B," with such rights and privileges as are described in this Declaration and in the Association's Articles and By-Laws. Class "A" Members shall be all Owners except the Class "B" Member, if any. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall terminate 30 days after the earlier of:

(i) the date upon which 100% of the Lots have been improved with a dwelling approved for occupancy and have been conveyed to Class "A" Members;

(ii) December 31, 2027; or



(iii) the date upon which the Declarant voluntarily terminates such membership by written notice recorded in the Public Records.

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

## Section 2. Voting.

(a) Class "A". Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 6.1; however, there shall be only one vote per Lot. In any situation where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(b) The Class "B" Member shall not have any specific number of votes, rather, the consent or approval of the Class "B" Member is required for certain actions as specified in the relevant sections of the Governing Documents. The Class "B" Member is also entitled to appoint members of the Board of Directors during the Developer Control Period, as specified in Sections 3.3 and 3.5 of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents.

(c) Manner of Voting. On any matter as to which the Governing Documents or South Carolina law require a vote or approval of the membership, such vote or approval may be obtained by affirmative vote at a meeting or by written consent, or by any combination thereof, unless the Governing Documents or South Carolina law expressly require that the vote on such matter be taken at a meeting of the membership.

## ARTICLE IV

### **The Association; Association Rights and Restrictions; Variances**

#### Section 1. The Association.

Prior to the date this Declaration has been filed for record with the ROD Office of Greenville County, South Carolina, the Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

#### Section 2. Association Rights and Restrictions.

The Association, acting through its Board, shall have the right and authority, in addition to and not in limitation of all other rights it may have, to:

(a) make and enforce reasonable rules and regulations governing the use of the Community, including the Lots or the Common Property,

(b) enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations; by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or by an aggrieved Owner,

(c) grant and accept permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Community under, through, or over the Common Property, as may be reasonably necessary or desirable for the ongoing development and operation of the Community,

(d) control, manage, operate and, in the Board's discretion, maintain, replace, alter, or improve all portions of the Community for which the Association is assigned maintenance responsibility under this Declaration,

(e) to represent and act on behalf of the Association in the event of damage or destruction as a result of casualty loss, condemnation, or eminent domain, in accordance with the provisions of this Declaration,

(f) represent the Owners in dealing with governmental entities on matters related to the Common Property,

(g) enter Lots or residences appertaining thereto for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes of this Paragraph, an emergency justifying immediate entry into a Lot shall include, but not be limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Lot shall exist; and

(h) acquire, lease, hold, or dispose of tangible or intangible personal property or real property.

### Section 3. Variances.

Notwithstanding the provisions hereof, the Board or ACC shall be authorized to grant variances with respect to compliance with the provisions of this Declaration, the Bylaws, or any other promulgated rule or regulation, provided that such waivers are not materially inconsistent with the Community-Wide Standard.



## ARTICLE V

### Assessments

#### Section 1. Purpose of Assessment.

The assessments provided for herein shall be used for the general purposes of promoting the common benefit and enjoyment of the Owners or Occupants of Lots, including the maintenance of real or personal property, all as may be authorized from time to time by the Board.

#### Section 2. Creation of the Lien and Personal Obligation for Assessments.

By acceptance of a deed to a Lot, regardless of whether it is expressed in such deed, each Owner covenants and agrees to pay to the Association: (a) annual assessments or charges, (b) special assessments, or (c) specific assessments including fines, late charges on delinquent assessments, interest on the principal amount of delinquent assessments, and costs, including, without limitation, reasonable attorney's fees actually incurred in enforcing the terms of this Declaration. All charges shall be a continuing lien upon the respective Lot to which such charges appertain. Within five days of receiving a written request, the Association shall, for a reasonable charge, cause to be furnished a statement setting forth whether the assessments on a specified Lot have been paid, which statement shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in monthly installments unless payment is otherwise provided by the Board. Any charge or assessment not timely paid shall be delinquent. The delinquency of any installment payment shall accelerate the unpaid balance due of other installments so that the entire assessment is immediately due and payable.

#### Section 3. Computation of Annual Assessments

It shall be the duty of the Board to prepare a budget covering the estimated operating costs of the Association during the coming year (Proposed Annual Budget), which may include a reserve, if necessary.

The Board shall levy a common assessment (Annual Assessment) against each Lot in an amount reasonably expected to produce total revenue to the Association equal to the Proposed Annual Budget. Notice thereof shall be provided to the Owner. The Proposed Annual Budget and the assessment shall become effective and control unless disapproved by a majority of the Total Association Vote. In the event a Proposed Annual Budget is disapproved or not prepared by the Board, the Budget and Annual Assessment prevailing immediately prior thereto shall be reinstated or remain in effect as the case may be.

#### Section 4. Initiation or Transfer Fee

A nonrefundable fee of \$150.00 ("Initiation Fee") shall be paid to the Association at the time each Lot is first sold or conveyed to an Owner other than the Declarant or Builder, which shall be used for the purpose of providing working capital to the Association.

Post payment of an Initiation Fee, subsequent title transfers shall cause a fee ("Transfer Fee") of \$50.00 to be payable to the Association for the purpose of defraying expense attendant to such transfer i.e., administrative overhead, printing and distributing copies of this Declaration, Bylaws, etc.

#### Section 5. Special Assessments.

If approved by a majority of the Total Association Vote, the Association may levy special assessments to cover unbudgeted expenses or expenses in excess of those budgeted (Special Assessments), which shall be paid as determined by the Board.

#### Section 6. Lien for Assessments.

All assessments or charges against any Lot, together with late charges, interest, reasonable attorney's fees actually incurred in enforcing the terms of this Declaration, shall be secured by a lien on such Lot in favor of the Association, which shall be entitled to file such a lien in the land records of Greenville County, South Carolina and shall be superior to all other liens or encumbrances except for (a) liens for ad valorem taxes, or (b) liens for all sums secured by a 1<sup>st</sup> position Mortgagee of record in Greenville County, South Carolina.

The lien(s) provided herein shall be in favor of the Association, who shall have the power to bid at any foreclosure sale of such lien any may hold or convey all interests whatsoever necessary or incidental thereto.

No Owner may escape liability for the assessments provided herein by abandonment of a Lot or otherwise. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and no right of abatement or setoff shall exist by reason of the act or failure to act of the Association under the Declaration or the Bylaws. Also, the voting rights of any Owner may be suspended by the Association if such Owner is delinquent as to any assessment or charge under this Declaration or Bylaws. The Owner shall also be personally liable and subject to suit and judgment in favor of the Association for all charges or assessments of the Association appertaining to the Lot or the Owner.

#### Section 7. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment fifteen days past due shall incur a late charge that shall be the greater of \$15.00 or 15% of the delinquent amount due. Further, an assessment delinquent for 30 days shall bear interest at 12% per annum from the inception of delinquency until paid in full. Payments received for charges or assessments shall be applied against amounts due in the following order:



costs (e.g. recording fees, filing, service of process, etc.), attorney's fees, late charges, interest, and assessments.

#### Section 8. Date of Commencement of Assessments.

Assessments shall commence as to a Lot on the date of conveyance of the Lot to a Person other than (a) the Declarant, or (b) a Builder. The Declarant or Builder shall not be responsible for the payment of any type of assessment, except that assessments shall commence on Lots containing occupied residences that are owned by Declarant or any Builder on the first day of the month following the occupancy of the residence located on the Lot. The monthly Assessment shall be pro-rated according to the number of days then remaining in that month.

#### Section 9. Specific Assessments.

The Board, in its discretion, shall have the power to specifically assess. Failure of the Board to specifically assess shall create no cause of action against the Association nor constitute a waiver of the right of the Board to subsequently specifically assess. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board may also specifically assess Owners for:

- (a) expenses of the Association that benefit less than all of the Lots in the Community may be specifically equitably assessed among those Lots benefited on the basis of the benefit received by such Lots; and
- (b) expenses of the Association that benefit all Lots but not equally, may be assessed equitably among all Lots according to the benefit received.

#### Section 10. Budget Deficits During Declarant Control.

As long as the Declarant has the authority to appoint the directors or officers of the Association, Declarant may (a) advance funds to the Association sufficient to satisfy the deficit between the actual operating expenses of the Association (but specifically excluding an allocation for capital reserves) and the sum of the annual, special, and specific assessments collected by the Association in any fiscal year, and such advances may be evidenced by promissory notes from the Association in favor of the Declarant or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant may guarantee repayment of such loan but no Mortgage secured by the Common Property shall be given in connection with such loan.

## ARTICLE VI

### Insurance and Casualty Losses

#### Section 1 Insurance on Common Property.

The Board of Directors or its agent shall have authority to and shall obtain insurance for all insurable improvements that are Common Property and, at the Board's exclusive option, may obtain insurance for the residence and other improvements on Lots. At a minimum, coverage provided shall include fire and extended coverage, vandalism and malicious mischief, and be for full replacement cost of repair or damage from such peril. Alternatively, the Board may purchase all-risk coverage.

The Board shall obtain a public liability policy for the Common Property covering damage or injury caused by the negligence of the Association or its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million and No/100 Dollars (\$1,000,000.00).

Premiums for the Association's insurance shall be a Common Expense. The policies may contain a deductible amount per occurrence not to exceed one thousand dollars (\$1,000.00), which shall not be subtracted from the face amount of the policy in determining whether the insurance equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the Owners and, except as otherwise provided above, shall be governed by the following provisions:

- (a) Policies shall be written with a company authorized to do business in South Carolina.
- (b) Policies covering improvements on Lots shall be for the benefit of Owners and their mortgagees, as their interests may appear.
- (c) Exclusive authority to adjust loss shall be vested in the Board; however, no Mortgagee having an insurable interest may be prohibited from participating in any settlement negotiations of such loss.
- (d) In no event shall the insurance coverage be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (e) If reasonably available, casualty coverage shall have an inflation guard endorsement and an agreed amount endorsement.



(f) Coverage shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in Greenville County.

(g) The Board of Directors shall exert reasonable efforts to effect coverage as follows:

(i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) no policy may be cancelled, invalidated, or suspended on account of any one or more Owners;

(iv) no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any default or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the default or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that "other insurance clause" exclude individual Owners' policies from consideration; and

(vi) no policy may be canceled, subjected to nonrenewal, or substantially modified without at least 30 days' prior written notice to the Association.

The Board may obtain directors' and officers' liability coverage, worker's compensation insurance, and fidelity bond for those handling or responsible for the Association's funds. Fidelity coverage shall contain a waiver of defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal, or substantially modified without at least 30 days prior written notice to the Association.

## Section 2. Individual Insurance.

If the Association does not maintain a master insurance policy on the residences and other improvements on Lots, then each Owner covenants and agrees with all other Owners and the Association that each Owner shall carry blanket all-risk replacement cost casualty insurance on the Lot and improvements thereon and liability coverage for damage or injury occurring on such Lot. Each Owner must list the Association as an additional insured on its casualty insurance policy relating to such Owner's Lot. Coverage shall be in effect at all times and, (upon the Association's request), a copy of such insurance shall be provided to the Board. In the event an Owner fails to obtain and maintain insurance, as required by this Section, the Association may purchase coverage on behalf of the Owner and specifically assess the cost thereof to the Owner.

Each Owner further covenants and agrees that in the event of damage or destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the improvements prior to such loss or in a manner as approved otherwise by this Declaration, unless a determination not to rebuild is made in accordance with this Declaration. The Owner shall pay any cost of repair or reconstruction which is not covered by insurance proceeds. In the event improvements are totally destroyed and a determination is made not to rebuild, the Owner shall clear the Lot of debris and return it to the natural state existing prior to such destruction and thereafter continue to maintain the Lot in a well kempt condition consistent with the Community-Wide Standard.

### Section 3. Insurance Deductibles.

In the event of an insured loss, any deductible shall be considered a maintenance expense to be paid by the Person(s) otherwise responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. Notwithstanding the foregoing, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Owner shall be responsible for paying the deductible appertaining thereto. If an Owner fails to pay the deductible when required under this Declaration, then the Association may pay the deductible and assess the cost thereof to the Owner.

### Section 4. Casualty Losses.

The Board of Directors or its agent shall arrange for and supervise the prompt repair and restoration of damage or destruction to the Common Property from fire or other casualty, unless eighty percent (80%) of the Total Association Vote, including the Owner(s) of the damaged Lot(s), and the Declarant vote not to proceed with reconstruction and repair. The Declarant's vote is required hereunder only as long as the Declarant has the right to appoint and remove directors and officers of the Association. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage.

Immediately after a casualty causing damage to the Common Property, the Board or ACC shall obtain reliable and detailed estimates of the costs to repair or restore the affected improvements to the condition existing prior to such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

If insurance proceeds are insufficient to defray the estimated costs of damage to the Common Property, a special assessment may be made. If surplus funds exist after repair or reconstruction, then the surplus shall be common funds of the Association to be used as directed by the Board of Directors.

Repair or reconstruction shall be substantially in accordance with the plans and specifications under which the Common Property was originally constructed unless otherwise approved by the Board or ACC.



Insurance or other proceeds collected by the Association incident to a casualty shall be held and disbursed for costs of repair or reconstruction as determined by the Board.

## **ARTICLE VII**

### **Condemnation**

In the event of a taking of improvements on Common Property by eminent domain then the Association shall diligently restore or replace the improvements on the Common Property to the extent land is available, unless eighty percent (80%) of the Total Association Vote other than Declarant and the Declarant otherwise agree. The Declarant's vote is required hereunder only as long as the Declarant has the right to appoint and remove directors and officers of the Association.

## **ARTICLE VIII**

### **Architectural Standards**

#### **Section 1. General.**

Without first obtaining the written consent of the Board or ACC, unless otherwise provided herein, no Owner, Occupant, or other Person may:

- (a) encroach onto the Common Property;
- (b) construct any improvement on a Lot;
- (c) make any exterior change, alteration, or construction on a Lot (including, without limitation, painting, regrading, altering or replacing any mailbox, or landscape modification); or
- (d) erect, place, or post any object, sign, clothesline, storm door, artificial vegetation, sculpture, fountains, flags, architectural modifications or other thing (collectively Modifications) on a Lot or Common Property, which may be visible from the exterior of a residence.

The standard for approval of Modifications shall include, without limitation, aesthetic considerations, materials to be used, compliance with the Community-Wide Standard or this Declaration, or the design standards adopted by the Board or ACC, harmony with the external design of the existing improvements, or the location in relation to surrounding improvements and topography.

Applications for Modifications shall be in writing and provide such information as the Board or ACC may reasonably require. The Board or ACC shall be the sole arbiter of approving such applications and may withhold approval for any reason, aesthetic or otherwise. Also, the Board

or ACC may rescind approval of Modifications if they fail to conform to plans previously approved.

This Article shall not apply to the activity of the Declarant or to Modifications of the Common Property by the Association or its agents.

## Section 2. Architectural Control Committee.

**During Declarant Control.** While the Declarant has the right to appoint or remove directors or officers of the Association, no modifications, exterior changes or alterations whatsoever may be made without the prior written approval of the Declarant. Granting or withholding such approval shall be within the sole discretion of the Declarant.

**After Declarant Control.** When the Declarant no longer has the right to appoint or remove directors or officers of the Association, the Board or ACC may approve or delegate the approval of Modifications to a subcommittee or designate an independent contractor to review applications for Modifications and to make recommendations to the Board or ACC. The Owner of a Lot for which Modifications are sought, shall be responsible for paying the full costs of each review, regardless of whether such application is approved and the Board may require payment of part or all such review cost prior to considering such application.

## Section 3. Condition of Approval.

A continuing condition of Modification approval shall be that the Owner be responsible for the insurance appertaining to such Modification. In its discretion, the Board or ACC may require an Owner to furnish evidence satisfactory to the Board or ACC of liability insurance coverage for such Modification. Failure of an Owner to furnish written evidence of such coverage will authorize the rescission of the approval previously granted by the Board or ACC.

## Section 4. Limitation of Liability.

As to approval of applications for Modifications, the Board or ACC shall bear no liability for design, quality, structural integrity, or soundness of such Modifications and the Owner shall hold the Board, ACC or Association harmless from claim or loss therefore.

## Section 5. Enforcement.

Any construction, alteration, or Modification done in violation of this Declaration or the Bylaws shall be deemed to be nonconforming and, upon written notice from the Board or ACC, such shall be removed by the Owner without expense to the Board. Noncompliance of an Owner with the foregoing shall authorize the Association or its agents the right of entry and removal of the nonconforming Modification and restoration of the affected area to the standard prevailing immediately prior to the Modification's existence and the Owner shall hold the Board, ACC or Association harmless from all costs whatsoever incurred in effecting or enforcing the foregoing, which may be enforced as a specific assessment against the Owner.



Without limiting the foregoing, the Board is also empowered to impose a fine or fines as to the existence or continuance of the nonconformity, as well as pursue other legal or equitable remedies available to enforce the provisions of the Declaration or Bylaws.

#### Section 6. Commencement of Construction.

All improvements or Modifications approved by the Board or ACC hereunder must be commenced within six months from the date of approval and non-compliance therewith shall revoke such approval unless a written extension thereof is given by the Board or ACC. Further all work shall be completed within 90 days of the commencement of work.

#### Section 7. Approval of Contractors, Landscapers and Architects.

The Declarant or, if there is no longer a Declarant, the Board, reserves the right to approve all contractors or architects performing alterations on any Lot, which approval may be withheld at the sole discretion of the Declarant or Board. No contractor or architect will be approved without liability insurance coverage for their acts and their proposed undertaking is their primary occupation.

### **ARTICLE IX**

#### **Use Restrictions and Rules.**

##### Section 1. General.

In addition to the use restrictions following below, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Lots until and unless overruled, canceled, or modified, by the Declarant (until such time as the Declarant no longer has the right to appoint and remove directors or officers of the Association) or by a majority of the Total Association Vote. Notwithstanding the above, until such time as the Declarant no longer has the right to appoint and remove directors or officers of the Association pursuant to the Declaration or Bylaws, no rules and regulations which affect the Declarant may be adopted, modified, or deleted without the written consent of the Declarant.

##### Section 2. Single-Family Residential Use.

Each Lot shall be used for single-family residential purposes only. The maximum number of Occupants in a Lot shall be limited to two (2) people per bedroom of the residence appertaining to the Lot. Occupancy for purposes hereof, shall be defined as staying overnight for a total of more than thirty (30) days, either consecutive or non-consecutive, in any calendar year.

No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a residence on a Lot may conduct such ancillary business activities within the residence as long as the business activity:

- (a) is not apparent or detectable by sight, sound, or smell from outside of the residence;
- (b) does not involve visitation of the residence by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential residence without business activity;
- (c) conforms to all zoning requirements for the Community;
- (d) does not increase traffic in the Community in excess of what would normally be expected for residences in the Community without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services, and other such similar delivery services);
- (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (f) is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, and does not otherwise violate any other provision of the Association's legal instruments, as determined in the Board's discretion; and
- (g) does not result in a materially greater use of Common Property facilities or Association services.

As used herein, the terms business and trade shall be construed to have their ordinary, generally accepted meanings and include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that 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: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

Notwithstanding the foregoing, nothing set forth herein shall prohibit the Declarant or a Builder from conducting sales, leasing or promotional activities on any portion of the Community as the Declarant shall determine including using any Lot as a model home or sales office.

If an Owner of a Lot is not a natural person i.e., corporation, partnership, trust, or other legal entity, the Owner shall designate in writing to the Board the name(s) of the person(s) who will occupy the residence on the Lot and such persons may not change more frequently than once every six months.

### Section 3. Use of Common Property.

Without the prior written consent of the Board, there shall be no obstruction of the Common Property, nor shall anything be kept, parked, or stored on any part of the Common Property.



Subject to any restrictions imposed by the Board and with their prior written approval, Owner(s) or Occupant(s) may reserve portions of the Common Property for temporary use, which shall be conditioned upon the Owner(s) or Occupant(s) assumption of all risks attendant to such use by themselves, their guests or invitees and upon their holding the Board, Association or their agents harmless from all damage whatsoever to the Common Property or liability to others for injuries howsoever incurred.

#### Section 4. Occupants Bound.

All provisions hereof, governing the conduct or sanction of Owners, shall also apply to Occupants even though Occupants are not specifically mentioned and fines may be levied against Occupants which shall be a lien and assessment against the Owner as well.

#### Section 5. Signs.

Without prior written consent of the Declarant as long as the Declarant has the right to appoint or remove directors or officers of the Association, or consent of the Board if the Declarant's right has lapsed, no sign of any kind shall be erected by an Owner or Occupant within the Community. Exceptions to such prior approval are signs for: (a) customary name and address, (b) when offering a Lot or residence for sale or for lease provided that it is not more than one and is professionally lettered For Sale or For Rent consistent with the Community-Wide Standard and having a maximum area of four square feet and a maximum height of four feet above ground level, (c) professional security consistent with the Community-Wide Standard, (d) required by legal proceedings, or (e) erected by Declarant or Builder. The restriction shall include the prohibition of placement of any sign within any structure from which the sign shall be visible from the outside.

Notwithstanding the foregoing, the Board or ACC may erect reasonable and appropriate signs. No advertising, directional or vendor signs shall be permitted within the Community except as authorized by the Declarant.

#### Section 6. Vehicles and Parking.

No Owner or Occupant may keep or bring onto the Community more than a reasonable number of vehicles per Lot at any time, as determined by the Board; provided, however, the Board may adopt reasonable rules limiting the number of vehicles which may be parked in the Community. Vehicles may only be parked in garages, designated parking spaces, or other areas authorized in writing by the Board. However, under no circumstances shall vehicles be parked on the street (excluding limited, short-term street parking for guests of an Owner).

Disabled and stored vehicles are prohibited from being parked in the Community except in garages. For purposes hereof a vehicle shall be considered disabled if it does not have a current license tag or is inoperable. A vehicle shall be considered stored if it remains in the Community for 14 consecutive days or longer without prior written Board permission.

Boats, trailers, buses, panel trucks, trucks with a load capacity of one ton or more, vans (excluding vans used by handicapped persons, mini-vans, or utility vehicles used as passenger vehicles and receiving a car or passenger vehicle classification by the South Carolina Department of Motor Vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on the exteriors other than Sheriff's, Marshall's, or police officer's vehicles marked as such, are also prohibited from being parked on a Lot or in the Community, except in garages or other areas approved by the Board as parking areas for particular types of vehicles. Notwithstanding the foregoing, trucks, vans, commercial vehicles, and vehicles with commercial writings on their exteriors shall be allowed temporarily in the Community during normal business hours for the purpose of serving any Lot or the Common Property; provided, however, no such vehicle shall remain on the Lot or the Common Property overnight for any purpose unless prior written consent of the Board is first obtained.

If any vehicle is parked in the Community in violation of this Declaration or of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed in the Community stating the name and telephone number of the person or entity that will do the towing. If 24 hours after such notice is placed on the vehicle, the violation continues or recurs within six months of such notice, the vehicle may be towed without further notice to the vehicle owner or user.

If a parked vehicle is in a fire lane, blocking another vehicle or access to another Owner's or Occupant's Lot or residence, obstructing the flow of traffic, parked on any grassy area, or creates a hazardous condition, no notice thereof to the owner or user shall be required and the vehicle may be towed immediately. The Association nor any officer, director or agent thereof shall be liable for damage or loss arising by the towing activity authorized herein. The Association's right to tow is not in limitation of but in addition to all other rights of the Association including the right to assess fines.

#### Section 7. Garages.

No garage appurtenant to a residence may be converted to any other use nor may an Owner or Occupant park his or her motor vehicle on any portion of the Community other than in the garage unless the maximum number of motor vehicles that can be parked in the garage, according to its design capacity, are already parked in said garage. Except for necessary use, ingress, and egress, garage doors shall remain closed at all times. All garages shall be maintained in a manner that maximizes the parking for which such garage was designed.

#### Section 8. Animals or Pets.

No animals, livestock, or poultry of any kind shall be on any Lot or the Common Property with the exception of a reasonable number of generally recognized household pets i.e., dogs, cats, birds, or other usual and common household pets, however, no such pet's weight shall exceed 110 pounds. No Owner or Occupant may keep, breed, or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet, such as dog houses



and dog runs, shall be constructed or maintained on any part of the Community without prior written Board approval. Pets must be kept on a leash at all times and accompanied by the owner or person responsible for the pet when outside. Also, feces must be removed by the owner of the pet or the person responsible for the pet.

If any pet, in the Board's sole discretion, endangers the health of any Owner or Occupant, makes objectionable noise, or constitutes a nuisance or inconvenience, it may be permanently removed by the Board from the Community upon seven days written notice to the owner of such pet. Notwithstanding the foregoing, any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety, or Land of any Community member, may be removed by the Board without prior written notice to the pet's owner.

Without prejudice to the Board's right to remove pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Pets shall also be registered, licensed, and inoculated as required by law. Furthermore, any Person who keeps or maintains a pet within the Community shall, ipso facto, be deemed to hold the Association, its directors, officers, or agents harmless from any loss whatsoever arising by reason of keeping or maintaining such pet within the Community.

#### Section 9. 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 Lot. No Lot in the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot 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 discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the surrounding Land. No noxious or offensive activity shall be carried on in the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property in the Community.

#### Section 10. Unsightly or Unkempt Conditions.

The pursuit of activities that may tend to cause disorderly, unsightly, or unkempt conditions i.e., without limitation, the disassembly or assembly of motor vehicles or other mechanical devices, shall not be undertaken in the Community. Clothing, clotheslines, bedding, rugs, mops, buckets, appliances, indoor furniture, or other similar items shall not be placed or stored outside the residence. Only appropriate outdoor items, i.e., neatly stacked firewood, patio furniture, or grills may be kept on the patio or deck serving the Lot.

#### Section 11. Air Conditioning Units.

Except as may be permitted by written consent of the Board or ACC, no window air conditioning units may be installed. Unless otherwise placed on a Lot by the Declarant, condensing units for air conditioners shall only be located in the rear of or along the side of a residence constructed upon a Lot.



## Section 12. Antennas and Satellite Dishes.

Except as provided below, no satellite dish, antenna, or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation shall be erected, used, or maintained on any portion of the Community; provided, however, that the Association shall have the right to erect, construct, and maintain such devices. No such device may be installed on or through the shingles of any roof. The following shall apply to all Owners:

(a) No transmission antenna, of any kind, may be erected anywhere on the Community without written approval of the Board or the ACC.

(b) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed, or maintained upon the Community.

(c) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association.

(d) In the event of a transfer of a Lot that includes the satellite dish or antenna, the grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas including their maintenance or removal. Furthermore, any antenna or satellite dish that is not in use by the Owner shall be removed.

## Section 13. Fences.

Unless approved in writing by the Declarant or the Association, no fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, except for fences erected by Declarant or a builder in connection with the construction of the permanent dwelling on the Lot. After Declarant no longer has the right to appoint or remove the directors and officers of the Association, the Association may erect and maintain fences on the Common Property.

## Section 14. Recreational Areas.

Any recreational area or other areas or equipment located on the Common Property shall be used at the risk of the user, and the Association shall be without liability whatsoever to any Person for loss, damage or injury occurring arising from such use. No recreational equipment (e.g. basketball goals) shall be erected, installed, or placed on any Lot without the prior written consent of the Board or ACC.

## Section 15. Garbage Cans.

All garbage cans, waste receptacles or similar items shall be located or screened so as to be concealed from view of neighboring Lots and Common Property and all streets that border the Lot. All construction debris, rubbish, trash, or garbage (collectively "Waste") shall be regularly removed and shall not be allowed to accumulate. No Waste shall be placed on the Common Property temporarily or otherwise, except as provided herein. Waste shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. No Owner or Occupant shall be permitted to place Waste at the street curb for pickup except within the 12 hours preceding such scheduled Waste pickup. All such Waste receptacles shall be removed from the street curb and screened or concealed from view within 12 hours after such scheduled Waste pickup.

## Section 16. Subdivision of Lot.

No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to change the boundaries or to replat Lot(s) owned by Declarant.

## Section 17. Outbuildings.

No structures i.e., without limitation, tents, shacks, carports, barns, tool sheds, doghouses, cages, coops, or other out structures shall be erected on any portion of the Community at any time, other than by Declarant.

## Section 18. Firearms and Fireworks.

On Common Property, the discharge of firearms or fireworks is prohibited and such items may not be displayed other than during transit to and from an Owner's Lot. The term firearms shall include B-B guns, pellet guns or similar arms of all types regardless of size.

## Section 19. Heating of Residences in Colder Months.

In order to prevent breakage of water pipes during colder months of the year which result in damage to the Community, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the residence on Lots shall be maintained with the heat in an on position and at a minimum temperature setting of 60 degrees Fahrenheit (except during power failures or periods when heating equipment is inoperable) whenever the temperature is forecasted to or does reach 32 degrees Fahrenheit or below. Owners and Occupants of Lots shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time when the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. All Owners and Occupants of Lots also shall be obligated to shut any and all cut-off valves for any and all outdoor spigots whenever the temperature is forecasted to or does reach 32 degrees Fahrenheit or below. In addition to other



remedies available to the Association and notwithstanding contrary provisions in the Declaration or Bylaws, the Board, without a prior warning, demand or hearing, may fine any Owner or Occupant up to Five Hundred and No/100 Dollars (\$500.00) or may cause water service to the violator's Lot to be discontinued for violation of this section. Any fine imposed pursuant to this Section shall be deemed an assessment against the Lot and may be collected in the same manner as provided herein for collection of assessments.

#### Section 20. Abandoned Personal Property.

Except for that owned by the Association, personal property (Personalty) is strictly prohibited from being stored, kept, or allowed to remain for a period of more than 24 hours upon any portion of the Common Property or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that there is a violation of this Section, then the Board may cause the Personalty to be removed, discarded, or stored as the Board may determine and neither the Association nor any officer or agent of the Association shall be liable to any Person for loss or damage resulting from such undertaking. The foregoing is in addition and not in limitation of other sanctions available to the Association e.g., fines or sanctions for abandoned or non-complying Personalty.

#### Section 21. Impairment of Residences and Easements.

An Owner shall do no act or work that impairs the structural integrity of any residence or impairs the use of any easement or other interest in the Land or allow any condition to exist that will adversely affect Owners or Occupants.

#### Section 22. Mailboxes.

The Declarant shall provide a mailbox or kiosk of mailboxes appertaining to respective Lot(s), which the Association shall maintain or replace as necessary to be in compliance with the Community Wide Standard.

#### Section 23. Patios.

Objects over 42 inches in height, laundry garments, towels and objects other than potted plants or patio furniture shall not be placed on a patio. Objects shall not be permitted to hang over or be attached to any exterior patio wall or to otherwise protrude outside of the vertical plane formed by the exterior surface of the patio wall. Enclosure of a patio is also prohibited. As used herein, enclosure shall mean the permanent enclosure of a patio into the heated and cooled space of a residence located on a Lot.

#### Section 24. Flags.

Decorative flags shall not be permitted on the exterior of a residence or a Lot; however, this provision shall not restrict the display of the U.S. flag.



## ARTICLE X

### Leasing

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Article X.

#### Section 1. Definition.

Leasing, for purposes of this Declaration, is defined as regular, exclusive occupancy of a residence on a Lot by person(s) other than the Owner which result in consideration or benefit flowing to the Owner i.e., without limitation, a fee, service, gratuity, or emolument. For purposes hereof, occupancy by a roommate of an Owner shall not constitute leasing.

#### Section 2. Leasing Provisions.

Leasing of Lots shall be governed by the following provisions:

**General.** Lots shall not be leased during the first year after an Owner takes title to such Lot unless such restriction causes undue hardship to the affected Owner. In such case, the Owner shall apply to the Board for a waiver of this restriction, which may be granted or disapproved in the Board's sole discretion. Lots may be leased only in their entirety; no fraction or portion of a Lot may be leased without prior written Board approval.

All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within 10 days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

**Compliance with Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments.** Each Owner and each lessee, by occupancy of a Lot, agrees that any lease for a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot:

**Compliance with Declaration, Bylaws, and Rules and Regulations.** The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure



such compliance. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute an assessment and be a lien against the Lot.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with South Carolina law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot.

Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

Liability for Assessments. When an Owner is delinquent for a period of 30 days as to the payment of an assessment on a Lot such Owner is leasing, then the Owner consents to the assignment and assigns to the Association any rent payable by the lessee to such Owner until such time as all assessments due on the Lot are paid in full. All such payments made by lessee shall offset the amount due Owner by lessee pursuant to their lease.

### Section 3. Applicability of this Article X.

This Article X shall not apply to any leasing transaction entered into by the Declarant or the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or deed in lieu of foreclosure.

## ARTICLE XI

### Sale of Lots

An Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This



Article shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of their ownership. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining such Owner's identity.

## **ARTICLE XII**

### **Maintenance**

#### **Section 1. Association's Responsibility.**

The Association shall maintain the Common Property in good repair, which shall be deemed to include maintenance, repair, or replacement of the Common Property i.e., without limitation: (a) all landscaping and grassy areas (e.g., landscaping buffers on perimeter of the Community), (b) all sidewalks or other concrete or paved areas not included in a Lot; (c) the entry or perimeter features regardless of being located on a public right-of-way i.e., without limitation, any irrigation system or expense for water or electricity pertaining to such maintenance, (d) any drainage or detention facilities that were originally maintained by the Declarant and are not maintained by a governmental entity; (e) specialty street signs, if any, originally installed by Declarant whether or not such street signs are on a public right-of-way; and (f) all such other property that the Board or ACC determines the maintenance thereof to be in the best interest of the Owners, regardless of whether owned by the Association or located outside of the Community.

Specifically excluded from such Common Property shall be the following: (i) HVAC or similar equipment located outside the residence; (ii) doors, hinges, frames, locks, and hardware which are part of the entry system; (iii) hoses, vents, or water spigots contained in exterior walls of the residence; (iv) lighting fixtures pertaining to a particular residence and being located outside an entryway or in a garage; (v) windows, window screens, frames, hardware, and glass; (vi) foundations and footings including waterproofing above and below grade; (vii) pipes which serve only one Lot located within the Lot's boundaries or, if located in the front yard on the Lot, outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot to the Lot itself, including the cutoff valve serving the Lot; (viii) gas lanterns; (ix) the replacement of any shrubs or other landscaping that are damaged by the Owner or Owner's tenants or invitees.

Upon resolution of the Board and approval of a majority of the members present or represented by proxy at a duly constituted meeting of the members, the Association may assume responsibility for providing additional exterior maintenance for Lot improvements. Also, the Association shall have the right, but not the obligation, to maintain other Land not owned by the Association if the Board determines that such maintenance would benefit all Owners.



Except to the extent the Association receives insurance proceeds for a claim, the Association shall be without liability for loss, damage or injury caused by: (a) the elements i.e., wind, rain, snow, water or ice including if such elements emanate from or are directed by property of others (e.g. utilities) located in any portion of the Common Property or (b) an Owner or Person including from any property of such Owner or Person that the Association may maintain or have custody of. No diminution or abatement of assessments shall be asserted or allowed by reason of any failure of the Association to act or perform as permitted or required by this Declaration.

If the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner or the Owner's agent, family, invitee, lessee, or licensee, then the Association may perform the maintenance, repair, or replacement at the expense of the Owner, and all costs thereof shall be specifically assessed against the Owner and shall be a lien against the Lot.

The Association shall procure and maintain a contract with a licensed South Carolina Pest Control Company, which shall provide for repair of damage caused by subterranean termites and retreatment for infestation. Said contract will cover all residences within the Community. Should an Owner require a South Carolina Wood Infestation Report, the Owner shall pay the expense of such report.

In performing its responsibility hereunder, the Association shall have the authority to delegate performance to such persons, firms, or corporations as the Board may choose.

## Section 2. Owner's Responsibility.

Other than Association maintenance responsibility, all other maintenance of a Lot shall be the responsibility of the Owner including any portion of pipes, lines, ducts, conduits, or other apparatus which serve only the Lot regardless if such items are located outside the Lot. The Owner shall also maintain and repair all door and window improvements on the Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard.

Maintenance undertakings by an Owner or Occupant as to Common Property that would otherwise be the responsibility of the Association shall be performed at the sole expense and risk of such Owner or Occupant without entitlement to reimbursement from the Association unless agreed otherwise by the Association in writing.

In maintenance undertakings, Owners shall:

- (a) perform their responsibility in a manner that does not unreasonably disturb other Persons;
- (b) promptly report to the Association or its agent any defect or need for repairs that the Association is responsible for;
- (c) make no alterations in portions of the Lot that are to be maintained by the Association, impair any easement or do anything with respect to the exterior or interior of the



Lot that may increase hazards or impediments to others without first obtaining the written consent of the Board or ACC and all Owners and Mortgagees that may be affected by such Owner's or Occupant's undertaking; and

(d) pay for the cost of repairing, replacing, or cleaning up any item that is the responsibility of the Owner or Occupant where such repair is undertaken by the Association regardless of whether such action is necessitated by the neglect, negligence or willful act of the Owner, Occupant or their invitees or licensees; and such cost shall be deemed an assessment as provided herein.

### Section 3. Failure to Maintain.

If the Board or ACC determines that an Owner has not discharged his maintenance obligation as provided herein, the Association may cause the maintenance to be performed at the Owner's cost and expense either forthwith in the event they deem an emergency to exist or after giving the Owner written notice, which may be tacked to the residence of the Owner's Lot, of the Association's intent to cause such maintenance to be performed if the Owner fails to do so within the time limit disclosed by such notice. The cost of such maintenance shall become a specific assessment against the Owner's Lot and a lien as herein provided.

### Section 4. Measures Related to Insurance Coverage.

The Board or ACC shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Community which are the maintenance responsibility of the Owner, which will, in the Board or ACC's sole discretion, decrease the possibility of fire or other damage to the Community, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, without limitation, requiring Owners to turn off cutoff valves during winter months for outside water spigots; to insulate pipes sufficiently or to take other preventive measures to prevent freezing of water pipes; to install smoke detectors; to make improvements to the Owner's Lot or take such other measures provided that the cost thereof does not exceed Five Hundred and No/100 Dollars (\$500.00) per Lot in any 12 month period.

Without limiting the foregoing or other rights available to the Association, in the event an Owner does not comply with authorized requests of the Board or ACC then the Association may cause the action requested to be performed at the Owner's cost and expense either forthwith in the event they deem an emergency to exist or after giving the Owner written notice, which may be tacked to the residence of the Owner's Lot, of the Association's intent to cause such action to be performed if the Owner fails to do so within the time limit disclosed by such notice. The cost of such action shall become a specific assessment against the Owner's Lot and a lien as herein provided. The Association's agents or independent contractors shall have all rights necessary to implement the requirements mandated by the Board or ACC, including, without limitation, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot, except that access may be had at any time without notice in an emergency situation.



Lot that may increase hazards or impediments to others without first obtaining the written consent of the Board or ACC and all Owners and Mortgagees that may be affected by such Owner's or Occupant's undertaking; and

(d) pay for the cost of repairing, replacing, or cleaning up any item that is the responsibility of the Owner or Occupant where such repair is undertaken by the Association regardless of whether such action is necessitated by the neglect, negligence or willful act of the Owner, Occupant or their invitees or licensees; and such cost shall be deemed an assessment as provided herein.

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If the Board or ACC determines that an Owner has not discharged his maintenance obligation as provided herein, the Association may cause the maintenance to be performed at the Owner's cost and expense either forthwith in the event they deem an emergency to exist or after giving the Owner written notice, which may be tacked to the residence of the Owner's Lot, of the Association's intent to cause such maintenance to be performed if the Owner fails to do so within the time limit disclosed by such notice. The cost of such maintenance shall become a specific assessment against the Owner's Lot and a lien as herein provided.

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Without limiting the foregoing or other rights available to the Association, in the event an Owner does not comply with authorized requests of the Board or ACC then the Association may cause the action requested to be performed at the Owner's cost and expense either forthwith in the event they deem an emergency to exist or after giving the Owner written notice, which may be tacked to the residence of the Owner's Lot, of the Association's intent to cause such action to be performed if the Owner fails to do so within the time limit disclosed by such notice. The cost of such action shall become a specific assessment against the Owner's Lot and a lien as herein provided. The Association's agents or independent contractors shall have all rights necessary to implement the requirements mandated by the Board or ACC, including, without limitation, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot, except that access may be had at any time without notice in an emergency situation.



## Section 5. Maintenance Standards and Interpretation.

The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board or ACC changes. These variances shall not constitute a waiver or estoppel as to right of the Board or ACC to adopt or enforce maintenance standards under this Declaration.

## ARTICLE XIII

### Party Walls, Fences and Driveways

#### Section 1. General Rules of Law to Apply.

Each improvement built as a part of the original construction on the Lots that serves or separates any two Lots shall constitute a party structure (e.g. fence, drive, wall), as applicable. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No Owner or Occupant shall make a modification to a party structure that may impair its functionality or fire rating.

#### Section 2. Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of a party structure shall be born equally by the Owners who benefit there from.

#### Section 3. Damage and Destruction.

If a party structure is destroyed or damaged by fire or other casualty and insurance coverage is inadequate to repair such damage, then any Owner holding an interest therein may restore it and then be reimbursed from others obligated to share such cost born equally.

#### Section 4. Right to Contribution Runs with Land.

The right of any Owner to contribution from any other Owner under this Declaration shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

#### Section 5. Arbitration.

Controversies arising in regard to obligations to shared expenses for party structures shall be submitted to binding arbitration as provided for and governed by the South Carolina Arbitration Code.

## ARTICLE XIV

### Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

#### Section 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 Lot number, therefore becoming an eligible holder), will be entitled to timely written notice of:

- (a) condemnation loss or any casualty loss that affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (c) the undertaking of any action requiring the consent of a specified percentage of Mortgage holders.

#### Section 2. Approval of Action.

Unless two-thirds of the first Mortgagees or Owners other than the Declarant give their consent, the Association shall not by act or omission:

- (a) abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this Declaration) other than personal Land of the Association;
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;
- (c) change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (the issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this Declaration);



(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such Land.

First Mortgagees, after written notice to the Association, may pay taxes or other charges that are in default and a lien against the Common Property or pay insurance premiums for Common Property, and shall be entitled to immediate reimbursement from the Association.

### Section 3. No Priority.

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Common Property.

### Section 4. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of the Owner's mortgage of a Lot.

### Section 5. Reserved.

### Section 6. Applicability of Article XIV.

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

### Section 7. 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 30 days of the date of the Association's request.

### Section 8. Amendments by Board.

Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, VA or HUD subsequently delete any of their respective requirements that necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

## Section 9. Liability for Common Expenses.

Where title to a Lot is conveyed pursuant to a foreclosure proceeding of a first position Mortgager the grantee of such title shall not be liable for the assessments by the Association appertaining to such Lot that became due prior to the date such grantee acquired title, but grantee shall be responsible for all assessments accruing thenceforth, which shall be deemed to include assessments accruing in the month title passed to such grantee.

## Section 10. Financial Statement.

Subject to the Association's right to collect a reasonable charge, a holder of a first Mortgage shall be entitled, upon written request, to receive a copy of the financial statement of the Association for the immediately preceding fiscal year.

## Section 11. Sales and Leases.

*The provisions of this Declaration notwithstanding, no limitation shall impair a Mortgagee's right to (a) foreclose or take title to a Lot secured by its Mortgage or (b) take a deed or assignment in lieu of foreclosure.*

# ARTICLE XV

## Easements

### Section 1. Easements for Encroachment, Overhang, or Access.

The following easements appurtenant are declared for as built improvements on Lots or Common Property of the Community: (a) access to basements or rear entries appurtenant to residences constructed on respective Lots including ingress and egress as reasonably necessary i.e., to and from the nearest Common Property nexus that will permit access to a public right-of-way, (b) encroachment of improvement(s) appertaining to one Lot upon adjoining Lot(s) e.g., roof overhang, footings etc., including encroachments occurring due to shifting or settlement of improvements, and (c) access to such encroachment of improvement(s) for the purpose of maintenance, repair or restoration thereof including ingress and egress over such other Lot(s) or Common Property as reasonably necessary for the dominant estate to exercise it easement rights.

### Section 2. Easements for Use and Enjoyment.

Every Owner shall have an easement for use and enjoyment of the Common Property including ingress and egress to such Common Property that shall be appurtenant to and pass with title to the Lot, subject to the Association's right to:

(a) charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;



(b) suspend an Owner's right to vote or prevent an Owner or Occupant from using the recreational facilities of the Community when assessments are delinquent or when an infraction of the rules, regulations, Declaration or Bylaws occurs;

(c) borrow money;

(d) grant easements or a license permits, licenses, or easements over, under, through, and across the Common Property to governmental entities for public purposes; and

(e) dedicate or transfer Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Owners of at least two-thirds of the Lots and the consent of Declarant as long as Declarant owns any Land for development or sale in the Community or has the right to subject Additional Real Property to the Community.

Any Owner may delegate use and enjoyment in and to the Common Property to the members of his or her family, tenants or guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot, if leased.

### Section 3. Easements for Street Lights and Utilities.

There is reserved to the Declarant, and the Association, blanket easements upon, across, above, and under all Lots in the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities and services, including any irrigation system and all street lights serving the Common Property, and reading meters e.g.: (a) utilities serving the Community or any portion of the Common Property i.e., gas, water, sanitary sewer, telephone, and electricity, (b) water runoff and storm drainage systems, (c) street lights, and (d) other services i.e., a master television antenna system, cable television system, master satellite system, or security system serving the Community. It shall be expressly permissible for the Declarant, Association, their agents or independent contractors to authorize the installation, repair or replacement of wires, conduits, cables, bulbs, apparatus or equipment related to providing any such utility or service. Should a vendor require a license or easement by separate recordable document, the Declarant, or Association shall have the authority to grant it.

Also, it shall be expressly permissible for any agent or employee of any utility company to enter onto a Lot to read any utility meter. In the event a meter on a Lot is in a gated or fenced in area, such area shall be universally keyed for the utility provider(s) or such Owner shall provide the Association with a key to such area. Neither the Declarant nor the Association shall be liable for any loss or damage due to its holding or use of such key for the purposes described above and each Owner shall hold harmless the Declarant, the Association, its officers and directors against any expense, loss or damage arising with regard to the holding or use of such key as provided above.

#### Section 4. Easement for Entry.

In addition to other rights, the Board or its agents shall have the right, without obligation, to enter upon any real property in the Community for reasons of emergency, security or safety. This right is also exercisable by agents of the Association or police, fire, ambulance or like personnel in the line of duty. Other than emergency situations, the right shall be exercised during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. Included in the right of entry is the right to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition after request by the Board.

#### Section 5. Easement for Association Maintenance.

Declarant reserves for itself and the Association or their agents or independent contractors, a perpetual easement in the Community for the purpose of maintenance, access or other use provided for or by the Declaration or Bylaws.

#### Section 6. Easements to Serve Additional Real Property.

The Declarant reserves an easement over the Common Property for the use, access, and development whatsoever of the Additional Real Property that may be subjected to this Declaration by Declarant.

#### Section 7. Easement for Entry and Perimeter Features and Street Signs.

Declarant reserves for itself and the Association or their agents or independent contractors, a perpetual easement in the Community for landscaping, street signs and entry and perimeter feature improvements in the Community including the construction or maintenance thereof and access thereto.

#### Section 8. Public in General.

Although no public easements are intended or created by this Declaration, the Board, upon reasonable notice posted in the Community, is authorized to temporarily close all or any portion of the Community that the Board deems necessary to prevent a public dedication or the acquisition of rights by others who are not the intended beneficiaries per this Declaration.

### **ARTICLE XVI**

#### **General Provisions**

##### Section 1. Enforcement.

Each Owner and Occupant shall comply strictly with this Declaration, Bylaws, rules or regulations governing the Land (collectively "Governing Documents"). The Board may impose fines or other sanctions, for violation of the Governance, which shall be collected as provided



herein for the collection of assessments or, without limitation, by an action for injunctive relief, damages or both by the Association or by an Owner. In any such action the prevailing party shall be entitled to recover reasonable attorney's fees actually incurred and court costs incident to such action. Failure to enforce the Governing Documents shall not be deemed a waiver of the right to do so thereafter.

## Section 2. Self-Help.

Without limiting the foregoing, the Association or its agent shall have the right to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing, or condition which violates the Governing Documents. Unless an emergency situation exists, the Board shall give the violating Owner or Occupant ten (10) day's written notice of its intent to exercise self-help. All costs of self-help i.e., without limitation, reasonable attorney's fees actually incurred, shall be assessed against the Owner or Occupant and shall be collected as provided for herein for the collection of assessments.

## Section 3. Duration.

The covenants, restrictions, and easements of this Declaration shall run with and bind the Community, and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as South Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of 20 years, unless two-thirds (2/3) of the persons owning Lots execute a document to terminating provision(s) of the Declaration.

## Section 4. Amendment.

This Declaration may be amended unilaterally by Declarant if necessary to (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial decree, (b) enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration, (c) comply with a requirement of an institutional lender or purchaser of mortgage loans secured by Lot(s) e.g., Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, for the making or purchasing of such loans or (d) enable any governmental agency or private insurance company to insure loans secured by Lot(s); provided that any such amendment shall not adversely affect the title to a Lot(s) without the written consent of an Owner thereto. Also, the Declarant may unilaterally amend this Declaration as long as it owns any real property for development or sale in the Community, provided that such amendment shall not materially impair an affected Owner(s) rights without his written consent thereto.

This Declaration may be amended upon the affirmative vote or written consent of the Owners of at least 55% of the Lots and the consent of Declarant, as long as the Declarant owns any Land for development or sale in the Community.

Any lawsuit disputing the efficacy of an amendment to this Declaration must be filed within one year of the date of recordation of such amendment in the land records of Greenville County, South Carolina.

#### Section 5. Gender and Grammar.

The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

#### Section 6. Severability.

If any provision of this Declaration shall be held invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.

#### Section 7. Captions.

The captions of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

#### Section 8. Perpetuities.

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 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

#### Section 9. Indemnification.

To the fullest extent allowed by law, the Association shall indemnify every officer and director harmless from expense, e.g., attorney's fees, imposed upon or reasonably incurred by any officer or director incident to an action, suit, or other proceeding to which such person may be a party by virtue of his office or directorship. Officer(s) or director(s) shall be without personal liability for misfeasance as officer(s) or director(s) unless willful, in wanton disregard or in bad faith.

#### Section 10. Books and Records.

Inspection by Owner(s) or Mortgagee(s). The Governing Documents, membership role, books of account, and minutes of meetings shall, upon reasonable notice, be made available at the office of the Association for inspection and, for a reasonable fee, copying by any Owner or Mortgagee(s).



## Section 11. Financial Review.

A review of Association books and records shall be made annually in the manner as the Board may decide; provided, by a majority of the Total Association Vote, the Owners may require that such books and records be audited as a common expense by a certified public accountant.

## Section 12. Agreement.

All agreements or determinations, including settlement agreements regarding litigation involving the Association, authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns.

## Section 13. Dispute Resolution.

Before filing any lawsuit against the Association or Board, an Owner or Occupant must give written notice of any grievance and afford a reasonable time to amicably resolve it between the concerned parties.

# ARTICLE XVII

## **Annexation or Submission of Additional Real Property**

### Section 1. Annexation.

During the seven year period following the recording date of this Amended and Restated Declaration, Declarant may, by filing a Supplementary Declaration in the land records of Greenville County, South Carolina, unilaterally submit any portion(s) of the Additional Real Property. Nothing in this Declaration shall be construed to require the Declarant or any successor to develop any of the Additional Real Property in any manner whatsoever. Post the expiration of such seven year period, the Association with the written consent of a majority of Owners, may, by filing a Supplementary Declaration in the land records of Greenville County, South Carolina, submit other property to the provisions of this Declaration.

### Section 2. Withdrawal of Land.

Declarant may unilaterally withdraw any portion of the land submitted to this Declaration during the seven year period following the recording date of this Amended and Restated Declaration.

### Section 3. Additional Covenants and Easements.

Declarant may unilaterally subject any portion of the Community submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain or insure additional property for Association's benefit.

## **ARTICLE XVIII**

### **Declarant's Rights**

#### **Section 1. Transfer of Declarant's Rights.**

Any or all of Declarant's rights may be transferred to other Persons by a written instrument signed by the Declarant and duly recorded in the land records of Greenville County, South Carolina.

#### **Section 2. Construction and Sale Period.**

Notwithstanding the Governing Documents, as long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across all real property in the Community for Declarant's use to carry on activities or maintain facilities necessary or convenient to Declarant's development, construction or sales related to Community.

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## **ARTICLE XVIII**

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[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Declaration has been executed, effective as of the date first written above.

DECLARANT:

Signed, sealed, and delivered  
in the presence of:

TCC VENTURE, LLC, a South Carolina  
limited liability company

Kellee Reeves  
WITNESS

GREGORY H. WADE  
By: GREGORY H. WADE  
Its: Managing Member

[Signature]  
WITNESS

STATE OF SOUTH CAROLINA

)

ACKNOWLEDGMENT

COUNTY OF GREENVILLE

)

I, J. Nathan Galbreath, a Notary Public, do hereby certify that TCC Venture, LLC,  
by its duly authorized Managing Member, personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument.

SWORN TO and subscribed before me  
this 19th day of November, 2012.

[Signature]  
Notary Public for South Carolina  
My commission expires: 2/15/2013



IN WITNESS WHEREOF, this Declaration has been executed, effective as of the date first written above.

Signed, sealed, and delivered  
in the presence of:

Kelli Reeves

WITNESS

Nathan Galbreath

WITNESS

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

INTERESTED PARTY CONSENTING:

CARDINAL CREEK CONSTRUCTORS,  
LLC, a South Carolina limited liability  
company

Christopher V. Sneed

By: Christopher V. Sneed

Its: Authorized Member

)  
)  
)

ACKNOWLEDGMENT

I, Nathan Galbreath, a Notary Public, do hereby certify that Cardinal Creek Constructors, LLC, by its duly authorized Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN TO and subscribed before me  
this 19<sup>th</sup> day of November, 2012.

Nathan Galbreath

Notary Public for South Carolina

My commission expires: 2/15/2018

IN WITNESS WHEREOF, this Declaration has been executed, effective as of the date first written above.

INTERESTED PARTY CONSENTING:

Signed, sealed, and delivered  
in the presence of:

SOUTH CAROLINA BANK AND TRUST

Keller Reams  
WITNESS

Daniel B. Minnis  
By: Daniel B. Minnis  
Its: Senior Vice President

[Signature]  
WITNESS

STATE OF SOUTH CAROLINA

)

ACKNOWLEDGMENT

COUNTY OF GREENVILLE

)

I, J. Nathan Galbreath, a Notary Public, do hereby certify that South Carolina Bank and Trust, by its duly authorized representative, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN TO and subscribed before me  
this 19<sup>th</sup> day of November, 2012.

[Signature]  
Notary Public for South Carolina  
My commission expires: 2/15/2013



**EXHIBIT A**

ALL that piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 18.13 acres, more or less, and being shown on plat entitled "Townes at Cardinal Creek " prepared by Azimuth Control, Inc. dated November 20, 2012, including, but not limited to, all current and future building sites as shown thereon, whether numbered or platted, said plat being recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1147 at Page 47 and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin in right-of-way of Smith Hines Rd., which iron pin is 790 feet, more or less, from the intersection of Smith Hines Rd. and Pine Gate Drive, and running thence along Smith Hines Rd. N. 11-50-17 E. 46.80 feet; thence N. 14-55-58 E. 50.87 feet; thence N. 11-56-28 E. 67.31 feet to an iron pin; thence turning and running S. 78-03-32 E. 8.00 feet; thence turning and running along Smith Hines Rd. N. 11-56-28 E. 420.86 feet; thence N. 13-10-42 E. 129.96 feet; thence N. 20-17-50 E. 142.38 feet; thence N. 26-24-19 E. 59.50 feet; thence N. 30-51-12 E. 92.53 feet; thence N. 37-21-57 E. 79.47 feet to an iron pin at the joint corner of property N/F of Linda F. Staton; thence turning and running with Staton line S. 31-26-32 E. 224.19 feet; thence turning and running with Staton line N. 65-09-51 E. 208.85 feet to a monument in the right-of-way of Interstate 385; thence turning and running along the right-of-way of Interstate 385 S. 27-40-00 E. 569.05 feet; thence S. 34-12-06 E. 401.18 feet; thence S. 34-03-29 E. 247.52 feet to an iron pin; thence turning and running N. 84-55-24 W. 82.57 feet; thence N. 84-41-15 W. 1190.41 feet to an iron pin, point of beginning.

## **EXHIBIT B**

### **DESCRIPTION OF ADDITIONAL LAND THAT MAY IN THE FUTURE BE SUBMITTED TO THE DECLARATION**

All that Land lying and being in a one-mile radius of the Land described on Exhibit A.



EXHIBIT C

BY-LAWS

OF

THE TOWNES AT CARDINAL CREEK  
HOMEOWNERS' ASSOCIATION, INC.

## BY-LAWS

### THE TOWNES AT CARDINAL CREEK HOMEOWNERS' ASSOCIATION, INC.

#### Article I

##### Name, Principal Office, and Definitions

1.1 Name. The name of the corporation is The Townes at Cardinal Creek Homeowners' Association, Inc. (the "Association").

1.2 Principal Office. The principal office of the Association shall be located in Greenville County, South Carolina. The Association may have such other offices, either within or outside the State of South Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions.

#### Article II

##### Associations: Membership, Meetings, Quorum, Voting, Proxies

2.1 Membership. The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board, either within the Properties or as convenient as is possible and practical.

2.3 Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held 60 days after the date of which 100% of the lots planned for development have been conveyed by the Declarant or when, in its discretion, the Class "B" member so determines. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.



2.4 Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 25% of the total Class “A” votes in the Association.

2.5 Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association, with postage prepaid.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member’s proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than 5 or more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting after adjournment is not fixed prior to adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.



2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9 Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership, or trust, through any officer, director, partner, or trustee duly authorized to act on behalf of the Member) or by proxy subject to the limitations of South Carolina law. All proxies shall be in writing specifying the Lot(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated, and filed with Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 Majority. As used in these By-Laws, the term “majority” shall mean those votes, Owners, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

2.11 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members representing 25% of the total Class “A” votes in the Association shall constitute a quorum at all meetings of the Association.

2.12 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by a Majority of Members entitled to vote thereon. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

### **Article III**

#### **Board of Directors: Number, Powers, Meetings**

##### **A. Composition and Selection.**

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors



appointed by the Class “B” Member, the directors shall be Members or Residents; provided no Owner and Resident representing the same Lot may serve on the Board at the same time. A “Resident” shall be any natural person 18 years of age or older whose principle place of residence is a Lot within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, employee, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class “B” Member.

3.2 Number of Directors. The Board shall consist of three to five directors, as provided in Section 3.3. and 3.5 below. The initial Board shall consist of one to five directors as identified in the Article of Incorporation and will remain as such until such time as the Class “B” membership expires.

3.3 Directors During Class “B” Membership. Subject to the provisions of Section 3.5 below, the directors shall be appointed by the Class “B” Member acting in its sole discretion and shall serve at the pleasure of the Class “B” Member until the first to occur of the following:

- (a) 60 days after the date as of which 100% of the Lots planned for development have (i) been conveyed by Declarant; and (ii) have been improved with dwellings for which a certificate of occupancy has been issued; or
- (b) December 31, 2027; or
- (c) when, in its discretion, the Class “B” Member so determines.

#### Nomination and Election Procedures.

(a) Nominations and Declaration of Candidacy. Prior to each election of directors by the Class “A” Members, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona fide interest in serving as a director may file as a candidate for any position to be filled by votes of Class “A” Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient, and cost-effective manner.

Except with respect to directors appointed by the Class “B” Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairperson, who shall be a member of the Board, and three or more Members or representatives of Members. The Board shall appoint the members of the Nominating Committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced at each annual meeting.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool

of potential candidates. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Owner may cast the entire vote assigned to his or her Lot for each position to be filled, there shall be no cumulative voting. The number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office. Not later than the first annual meeting after the termination of the Class "B" Membership, the Board shall be increased to five directors and an election shall be held. All five directors shall be elected by the Class "A" Members. Three of the directors shall be elected for a term of two years, and the remaining two directors shall be elected for a term of one year. Thereafter, all directors shall be elected for a two-year term. Directors elected by the Class "A" Members shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding a majority of the votes entitled to be cast for his or her election. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Member who has three or more consecutive unexcused absences for Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member or to any director serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member.

## B. Meetings.

3.7 Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within ten days thereafter at such time and place as the Board shall fix.



3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

3.10 Notice; Waiver of Notice.

Notice of the time and place of a regular meeting shall be communicated to directors not less than four calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to directors not less than 72 hours prior to the meeting. No notice needs be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) telecopy transmission or electronic message to the director's home or office, with confirmation of receipt. All such notices shall be given at the director's telephone number, telecopy number, electronic mail address, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal delivery, telephone, telecopy, electronic mail, or other device shall be deemed communicated when delivered, telephones, faxes, or e-mailed.

The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at commencement about the lack of adequate notice.

3.11 Telephonic Participation in Meetings. Members of the Board or any committee designed by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required

quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by a majority of the total Class “A” votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director’s interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14 Conduct of Meetings. The President shall preside over all meetings of the board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15 Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16 Action without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

#### C. Powers and Duties.

3.17 Powers. The Board of Directors shall have all of the powers and duties necessary for the administrative of the Association’s affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things as are not directed by the Governing Documents or South Carolina law to be done and exercised exclusively by the membership generally.

3.18 Duties. The duties of the Board shall include, without limitation;

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner’s share of the Common Expenses;



- (b) Levying and collecting such assessments from the Owners;
- (c) Providing for the operation, care, upkeep, and maintenance of the Common Property;
- (d) Designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) Depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) Making and amending use restrictions and rules in accordance with the Declaration;
- (g) Opening of a bank account on behalf of the Association and designating the signatories required;
- (h) Borrowing money from the Declarant as necessary to fund any Association
- (i) Making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (j) Enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;
- (k) Obtaining and carrying property and liability insurance and fidelity bonds, as provided in The Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (l) Paying the cost of all services rendered to the Association;
- (m) Keeping books with detailed accounts of the receipts and expenditures of the Association;
- (n) Making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any mortgage on any Lot, current copies of the Governing Documents and

(o) Permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and

(p) Indemnifying a director, officer, or committee member, or former director, officer, or committee member of the Association to the extent such indemnity is required under South Carolina law, the Articles of Incorporation, or the Declaration.

3.19 Right of Class “B” Member to Disapprove Actions. If the Class “B” Member voluntarily terminates its right to appoint the members of the Board or any committee prior to the termination date specified in Section 3.3, the Class “B” Member shall have a right until its right must expire under Section 3.3 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 Declaration or these By-Laws; interfere with development of or construction on any portion of the Properties; or diminish the level of services being provided by the Association.

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 it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Section 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meeting held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting.

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.

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.

The Class “B” Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. 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 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 days following receipt of written notice of the proposed action. 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, the Board, or the Association. So long as sufficient funds are available, 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.

3.20 Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and



services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority, or those duties set forth in Section 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21 Account and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) Cash basis accounting, as defined by generally accepted accounting principles shall be employed;
- (b) Accounting and controls should conform to generally accepted accounting principles;
- (c) Cash accounts of the Association shall not be commingled with any other accounts;
- (d) No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of communications, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;
- (e) Any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) An annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed, or compiled basis, as the Board determines by an independent public accountant; provided, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Lot, the Association shall provide an audited financial statement.

3.22 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided for Special Assessments in the Declaration if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

3.23 Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the

right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.24 Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Lot of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Governing Documents. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest, or invitee of a Lot violates the governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Lot and the Owner thereof upon notice from the Association. The failure of the Board to enforce any provision of the Governing Documents shall not be deemed a waiver of the right of the Board to do so thereafter.

Notice. Prior to imposition of any section hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Hearing. If a hearing is requested within the allotted ten-day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIV of the Declaration, if applicable, 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 procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant



responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Lot for purpose of exercising this power of self-help shall not be deemed as trespass.

## **Article IV**

### **Officers**

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies. The Board may remove any officer whenever, in its judgment, the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to the respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 Resignation. Any officer may resign at any time by giving notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Lease, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

## Article V

### Committees

5.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

5.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law or the Governing Documents.

5.3 Conflicts. If there are conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail

5.4 Books and Records.

Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the Restrictions and Rules, the membership register, books of account, and the minutes of meeting of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents requested.

Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

5.5 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or when sent by United States mail, first class postage prepaid:



(a) if to a Member, at the address which the Member has designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

## 5.6 Amendment.

By Class "B" Member. Until conveyance of the first Lot to a Person other than a Builder, the Class "B" Member may amend these By-Laws, subject to the approval requirements set forth in Article XII of the Declaration, if applicable. Thereafter, the Class "B" Member may amend these By-Laws if such amendment is specifically required to enable the U.S. Department of Veterans Affairs ("VA"), the U.S. Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to make, purchase, insure, or guarantee mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, any amendments to these By-Laws shall be subject to disapproval by HUD and/or VA if either such agency is insuring or guaranteeing residential loans within the Properties.

By Board or Members. The Board may amend these By-Laws by two-thirds (2/3) vote of the directors to conform this Declaration to the requirements of any governmental agency, federal, state or local, and for the requirements of any mortgage lender or for any reason that the Declarant deems advisable for the orderly development of the Properties. Any such amendment shall require the consent of the Declarant so long as it owns property subject to the Declaration or which may be subjected to the Declaration pursuant to Section 7.1 thereof. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in Article XII of the Declaration shall be met, if applicable.

Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recording, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six 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 these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority so to consent provision in any Mortgage or contract between the Member and third party will affect the validity of such amendment.

## CERTIFICATION

I, the undersigned, do hereby certify;

That I am the duly elected and acting Secretary of The Townes at Cardinal Creek Homeowners Association, Inc., a South Carolina nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors Thereof held on the 19th day of November, 2012.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 19th day of November, 2012.

*Eui Hedrick* (SEAL)  
Secretary

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*Timothy J. Harney*