



BP0124366

Parker Poe Draft  
May 11, 2010

RMC BK 0124 Pg 366 : pg 1 \*

**THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT (S.C. CODE ANN. § 15-48-10 ET SEQ., AS AMENDED)**

***NOTICE TO CLOSING ATTORNEYS: THIS DECLARATION IMPOSES ASSESSMENTS CONSTITUTING A LIEN ON EACH LOT IN THE SUBDIVISION. PLEASE CONTACT THE ASSOCIATION TO DETERMINE THE STATUS OF A PARTICULAR LOT WITH REGARD TO PAYMENT OF ASSESSMENTS. THE ASSOCIATION'S CONTACT INFORMATION MAY BE FOUND ON THE SECRETARY OF STATE'S WEBSITE.***

STATE OF SOUTH CAROLINA ) DECLARATION OF COVENANTS, CONDITIONS,  
 ) RESTRICTIONS, EASEMENTS, CHARGES AND  
COUNTY OF CHARLESTON ) LIENS FOR THE COTTAGES AT JOHNS ISLAND  
 )

THIS Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Cottages at Johns Island is made this 24<sup>th</sup> day of May, 2010, by Maybank Development, LLC a limited liability company organized and existing under the laws of the State of South Carolina (the "Developer," as further defined in Article I herein). Any defined terms used herein shall have the meaning set out in Article I hereafter:

**THE DEVELOPER EXPRESSLY RESERVES THE RIGHT TO AMEND OR RESTATE THIS DECLARATION WITHOUT THE CONSENT OF AN OWNER, THEIR MORTGAGEE(S) OR THE ASSOCIATION FOR SO LONG AS THE DEVELOPER OWNS ANY PORTION OF THE "PROPERTY" (AS DEFINED HEREIN). ANY AMENDED OR RESTATED DECLARATION MAY CONTAIN ADDITIONAL RESTRICTIONS OR OBLIGATIONS AFFECTING THE USE OF THE "COMMON AREA", A "LOT", "AREA OF EXTENDED LOT OWNER RESPONSIBILITY" (AS SUCH TERMS ARE DEFINED HEREIN) OR ANY OTHER SUCH PORTION OF THE "PROPERTY". ANY AMENDED OR RESTATED DECLARATION MAY ALSO AFFECT AN OWNER'S OBLIGATIONS AS A MEMBER OF THE ASSOCIATION. EVERY PURCHASER OR GRANTEE OF ANY LOT OR COMMON AREA NOW AND HEREINAFTER DESIGNATED, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE THEREOF, ACKNOWLEDGES NOTICE OF THE DEVELOPER'S RIGHT TO AMEND THIS DECLARATION AND THAT THEIR RIGHTS ARE SUBJECT TO CHANGE. ANY SUCH AMENDMENT SHALL BE APPLICABLE TO AND BINDING UPON THE OWNERS AND THE LOTS. AT THE OPTION AND SOLE DISCRETION OF THE DEVELOPER, ANY AMENDMENTS TO THE DECLARATION MADE BY THE DEVELOPER MAY APPLY: (I) UPON THE DAY OF EXECUTION OR RECORDING OF THE AMENDED OR RESTATED DECLARATION; (II) RETROACTIVELY TO THE DATE OF THIS DECLARATION OR TO SOME OTHER SPECIFIED DATE IN THE AMENDMENT; OR (III) PROSPECTIVELY TO SOME SPECIFIED DATE IN THE AMENDMENT. CERTAIN RIGHTS OF THE DEVELOPER SET OUT IN THE DECLARATION SHALL CONTINUE AFTER THE**

**DEVELOPER NO LONGER OWNS ANY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE RIGHT OF REESTABLISHING ITS CLASS "B" MEMBERSHIP IF AND WHEN IT RE-ACQUIRES ANY OF THE PROPERTY OR ANNEXES ANY ADDITIONAL LAND TO THE PROPERTY.**

**RECITALS**

1. The Developer, is the owner of the real property described in Exhibit A of this Declaration, and desires to develop thereon a Community which may be made up of Neighborhoods, if and when designated, and which may include common lands and facilities, for the sole use and benefit of the Owner of each Lot to be located in such Community or a Neighborhood, if and when designated, within the Community.

2. The Developer has acquired or may from time to time acquire additional real property which it may desire to develop as additional phases of the Community which the Developer may incorporate as additional phases of this Community and bring same under this Declaration.

3. The Developer is desirous of maintaining control of design criteria, Improvement location, Plans and construction specifications, and other controls to assure the integrity of the Community or each Neighborhood, if and when designated, within the Community. Each purchaser of a Lot or Dwelling in the Community will be required to maintain, modify, change, and construct the Dwelling and any Improvement in accordance with the design criteria contained herein and established by the Architectural Control Authority as hereinafter provided.

4. The Developer desires to provide for the preservation of the value and amenities in the Community and for the maintenance of the common lands and facilities, if any.

5. The Developer desires to subject the real property described in Exhibit A to the covenants, conditions, restrictions, easements, charges, and liens, hereinafter set forth and to the guidelines, policies, procedures, rules and regulations adopted by the Developer, the Board of Directors, When Empowered, or the Architectural Control Authority, When Empowered, for each Neighborhood, if and when designated, or the Community as a whole. Each and all of which is and are (i) binding upon the Community and each Owner, (ii) for the sole benefit of the Developer for so long as it owns any portion of the Property and if the Developer requires any portion of the Property or if Developer annexes any addition land to the Property even if this occurs after the Developer no longer owns any of the Property, and thereafter for the sole benefit of the Association, and (iii) shall run with the title to the land.

6. The Developer has deemed it desirable, for the efficient preservation of the values and the amenities in the Community, to create the Association to which will be delegated and assigned as further described herein, the powers of maintaining and administering any Common Area or Area of Common Responsibility, of administering and enforcing the Declaration; of establishing and amending the reasonable rules, regulations and policies for the proper management of the Association and for the promotion of the health, safety and welfare of the residents of the Community; and of levying, collecting and disbursing the Assessments and charges hereinafter created. The Developer may assign or delegate, either permanently or

temporarily, any or all of the foregoing powers to one or more entities or persons without notice to or the consent of any Owner.

7. The Developer has caused or will cause the Association to be incorporated under the laws of the State of South Carolina, as a nonprofit corporation, for the purpose of exercising the aforesaid functions, among others.

8. The Developer desires that certain of its rights under the Declaration to continue after the Developer no longer owns any of the Property or any additions thereto.

NOW, THEREFORE, the Developer declares that the real property described in Exhibit A, annexed hereto and forming a part hereof, and any additions thereto which the Developer may incorporate from time to time in the Community is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth which shall run with the title to the land and all Lots therein and which shall be binding on all Owners.

**ARTICLE I  
DEFINITIONS**

DEFINITIONS. The following capitalized words when used in this Declaration, any Supplement, or any Supplemental Declaration (unless the context shall prohibit) shall have the following meaning:

(A) "ADDITIONAL ASSOCIATIONS" when and if created, shall mean and refer to any other separate association owning land within the Property, or being given authority to control, manage or maintain portions of the Property owned or maintained by the Association.

(B) "ARCHITECTURAL CONTROL AUTHORITY(IES)" shall mean and refer to the Developer, any appointees of the Developer, or any architectural control boards or committees appointed by the Developer, while the Developer retains all or part of the rights and authority for architectural control in the Community, and the Board of Directors, When Empowered, or any architectural control boards or committees which may be appointed by the Board of Directors, When Empowered.

(C) "ARCHITECTURAL GUIDELINES" shall mean and refer to the set of policies, rules and procedures which may be promulgated and/or amended by the Architectural Control Authority, from time to time, which shall act as a guide for the architectural control and review process and for the maintenance, construction or renovation of Improvements in each Neighborhood, if and when designated, and within the Community. Failure to publish any Architectural Guidelines shall not diminish the architectural control and review authority of the Architectural Control Authority, as set forth in this Declaration.

(D) "AREA OF COMMON RESPONSIBILITY" shall have the meaning and refer to any Common Area, together with those areas, if any, the Developer or the Board of Directors, When Empowered, has established pursuant to the terms of this Declaration, any supplemental declaration, any Cost Sharing Agreement, Regulations or other applicable covenant, contract, or

agreement. The location and dimensions of the Area of Common Responsibility may be established, adjusted, or eliminated by the Developer and thereafter by the Board of Directors, When Empowered, in accordance with the provisions hereof.

(E) “AREA OF EXTENDED LOT OWNER RESPONSIBILITY” shall mean and refer to that portion of the road right-of-way, whether owned by the Developer, the Association, or any applicable governmental entity, extending from the end of the road’s curbing (or the end of the pavement itself, if no curbing exists) to any property line of a Lot that is contiguous to the road. Unless designated as Common Area or unless the Association has assumed maintenance responsibility for this area as part of its Area of Common Responsibility, each Owner shall be responsible for the maintenance and proper use of their corresponding Area of Extended Lot Owner Responsibility pursuant to the provisions of this Declaration, including without limitation obtaining appropriate Architectural Control Authority approvals, in addition to any other applicable governmental approvals, that may be required for any and all Improvements and landscaping built upon or located in the Area of Extended Lot Owner Responsibility. All remedies available to the Developer and the Association, When Empowered, for the failure of an Owner to properly maintain, use, or construct or locate Improvements upon a Lot shall also be available to the Developer and the Association, When Empowered, for the failure of an Owner to properly maintain, use, or construct or locate Improvements upon the Area of Extended Lot Owner Responsibility, as provided for in this Declaration. Said authority of the Developer and the Association, When Empowered, to control the Areas of Extended Lot Owner Responsibility is subordinate to the authority and approval of any property owner or applicable governmental entity possessing rights over or ownership of the Areas of Extended Lot Owner Responsibility. The responsibility of the Owner or Association to maintain the Area of Extended Lot Owner Responsibility does not create an ownership interest in any portion of the road right-of-way which extends from the end of the road’s curbing (or the end of the pavement itself, if no curbing exists) to any property line of a Lot that is contiguous to the road nor does the creation of such responsibility by this Declaration or the Regulations: (a) provide any Lot Owner with the authority to restrict in any way the use of any portion of the road right-of-way or the sidewalks by the Association or its Members or the normal use of the sidewalks or right-of-way by the general public, or (b) provide the Association with the authority to restrict in any way the normal use of the sidewalks or road right-of-way by the general public where the same is dedicated to a governmental authority or owned by the Developer. Unless otherwise restricted by a public body, governmental body, district agency or authority, where the road right-of-way or sidewalk is located upon a Common Area, the Association may restrict such use and access by the general public or any Lot Owner. The Association shall be authorized both to request and accept on behalf of all Lot Owners in the Community any licenses or permits that may be necessary or required by a governmental authority to facilitate such maintenance responsibility by the Association or Lot Owners.

(F) “ASSESSMENTS” shall have the meaning specified in Article VII.

(G) “ASSOCIATION” shall mean and refer to the Cottages at Johns Island Homeowners Association, Inc., its successors and assigns.

(H) “BOARD OF DIRECTORS” shall mean and refer to the board of directors of the Association.

(I) "BY-LAWS" shall mean and refer to the by-laws of the Association.

(J) "COMMON AREA" shall mean and refer to those areas of land within the Property, the location and dimensions of which may be established, modified, or adjusted by the Developer as set forth herein, shown as "Common Area" on any recorded Plat of the Property or so designated in any conveyance to the Association by the Developer including, but not limited to, any and all Improvements thereon or the furniture, fixtures or equipment thereon, entrance signs, lights, sprinklers, shrubs, landscaping, parking places, drainage or other easements used, owned or maintained by the Association or the Developer for the benefit of the Community, whether or not located within the street rights-of-way which have been dedicated to a governmental agency or a Lot. Such areas are intended to be devoted to the common use and enjoyment of Members of the Association, subject to the Regulations established and amended from time to time and the reserved rights of the Developer and the Association, and are not dedicated for use by the general public. NO REPRESENTATION FROM ANY PARTY OR SALES AGENT, INCLUDING THOSE OF THE DEVELOPER, OR OTHER ENTITY AS TO THE EXISTENCE OF A COMMON AREA, SIZE, SHAPE, OR COMPOSITION OF ANY COMMON AREA OR ACCESS LOCATION, OTHER THAN THOSE PROVIDED HEREIN OR PROVIDED IN WRITING BY THE DEVELOPER, SHALL BE RELIED UPON, NOR SHALL IT IN ANY WAY REQUIRE THE DEVELOPER TO COMPLY WITH THAT REPRESENTATION. The Community may, but shall not be required to, contain Common Area, and the fact that there are provisions in this Declaration referencing Common Area does not mean there is or will be Common Area in the Community. The Developer or the Association, When Empowered, may restrict Common Area located within a Specific Purpose Area for the exclusive use and enjoyment of only those Owners who own Lots in the Specific Purpose Area.

(K) "COMMUNITY" shall mean and refer to the subdivided Property.

(L) "COST SHARING AGREEMENT" shall mean and refer to any agreement between or among the Developer, the Association and/or a third party pursuant to which the Association or the Developer and/or such third party agree to share the cost of the construction, modification, maintenance, operation or other aspect of an Improvement or Area of Common Responsibility benefiting, directly or indirectly, the Developer and /or the Association and/or its Members, and/or the third party. A Cost Sharing Agreement shall include, but shall not be limited to, a cross-use agreement or easement between the Association or the Developer and/or the third party pursuant to which (a) the Association or the Developer grants the third party and/or its members or affiliates access to or use of the Association's Common Areas, including amenities, roads or other rights of way, or (b) the third party grants the Association and/or its Members access to or use of the common areas, including amenities, roads or other rights of way of such third party.

(M) "DECLARATION" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, Easements, Charges, and Liens, any amendment or modification hereof, and any supplements hereto.

(N) "DEVELOPER" shall mean and refer to Maybank Development, LLC a limited liability company organized and existing under and pursuant to the laws of the State of South

Carolina, its successors and assigns and its affiliates and subsidiaries; provided such successors and assigns, affiliates and subsidiaries are designated as such by the Developer. The Developer may make partial or multiple assignments of its rights under this Declaration. All such assignees shall be deemed to be the Developer only as to those rights which have been assigned to them, including, without limitation, any continuing rights of Developer after the Developer's Class "B" Membership has converted to a Class "C" Membership as set forth in this Declaration.

(O) "DEVELOPMENT GUIDELINES" shall mean and refer to those certain Development Guidelines for Planned Unit Development for the Cottages at Johns Island – Maybank Highway, City of Charleston, SC, dated January \_\_, 2003, as amended or modified.

(P) "DIRECTOR" shall mean and refer to an appointed or elected member of the Board of Directors.

(Q) "DWELLING" shall mean and refer to a single family home, patio home, garden home, townhouse, condominium unit, or apartment, if constructed in the Community.

(R) "FIRST LIEN MORTGAGEE" shall mean and refer to a bank, mortgage company or other institution in the business of loaning money that holds a first priority mortgage or deed of trust on a Lot or Dwelling in the Community.

(S) "IMPROVEMENT" shall mean and refer to any thing or object upon any portion of the Property including by way of illustration and not limitation, any Dwelling or building or part thereof, garage, porch, shed, mailbox, greenhouse, or bathhouse, coop or cage, covered or uncovered patio, siding, doors, fixtures, equipment, and appliances (including without limitation the heating and air-conditioning system for the Dwelling), furniture, glass, lights and light fixtures (exterior and interior), awnings, window boxes, window treatments, window screens, screen or glass-enclosed porches, balconies, decks, chutes, flues, ducts, conduits, wires, pipes, plumbing, and other like apparatus, playgrounds, playground equipment, tree houses and yard art, statuary, basketball goals (permanent or temporary), or other temporary or permanent sports equipment, swimming pool, fence, curbing, paving, driveways, walkways, wall or hedge, radio, television, wireless cable, or video antenna, satellite dishes, yard, lawn, landscaping, trees, shrubs, bushes, grass, well, septic system, sign, appurtenance, or signboard, whether temporary or permanent; any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of waters from, through, under or across any portion of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any portion of the Property; and any change in the grade of any portion of the Property of more than six (6) inches. The foregoing items are listed only as examples of items that would constitute Improvements, if constructed or located on the Property, and their inclusion in this definition does not imply that each such item will be approved by the Architectural Control Authority or constructed by the Developer or any other person or otherwise exist on the Property.

(T) "LOT" shall mean and refer to any parcel of land with such Improvements or Dwellings as may be erected thereon, shown and described as a "Lot" on any recorded subdivision Plat of the Property, but shall not include the Common Area, Area of Extended Lot

Owner Responsibility, Area of Common Responsibility or the streets or road rights-of-way in the Community.

(U) “MASTER ASSOCIATION” when and if created, shall mean and refer to any incorporated or unincorporated association to which or from which is delegated specific authority, the Members of which are common to the Association, Additional Associations or Sub-Associations to which or from which the authority is granted. The establishment of Neighborhoods, Neighborhood Architectural Control Authorities, Specific Purpose Areas, or Specific Purpose Committees, if and when designated, shall not be construed as creating a Master Association or Sub-Associations, unless expressly created and recognized as such by the Developer or the Association, When Empowered.

(V) “MASTER PLAN” shall mean and refer to the drawing, sketch, map, or planned unit development plan that represents the conceptual land plan for the future development of the Community. Since the concept of the future development of the undeveloped portions of the Community, including without limitation the Lots, streets or road rights-of-way and any Common Area, are subject to continuing revision and change at the discretion of the Developer, present and future references to the “Master Plan” shall be references to the latest revision thereof. In addition, no implied reciprocal covenants or obligation to develop shall arise with respect to lands that have been retained by the Developer for future development. **THE DEVELOPER SHALL NOT BE BOUND BY ANY MASTER PLAN, USE OR RESTRICTION OF USE SHOWN ON ANY MASTER PLAN, AND MAY IN ITS SOLE DISCRETION AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN, DEVELOP OR NOT DEVELOP THE REMAINING UNDEVELOPED PROPERTY OR COMMON AREA OR AMENITIES SHOWN ON ANY MASTER PLAN.**

(W) “MEMBER” shall mean and refer to any Owner, as provided in Article III hereof.

(X) “NEIGHBORHOODS” when and if designated, shall mean and refer to any specific group of Lots and/or Common Area and/or streets and road rights-of-way located within the Property identified as a distinct Neighborhood by the Developer or the Association, When Empowered. The Members of any and all Neighborhoods are Members of the Association or the Master Association, if created, and the Neighborhood exists under authority granted by the Developer or the Association. A Neighborhood is not a Specific Purpose Area, however the same portion of the Property may be designated a Neighborhood and a Specific Purpose Area.

(Y) “OWNER” shall mean and refer to the record owner or owners, whether one (1) or more persons or entities, of the fee simple title to any of the Lots, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage unless and until such mortgagee or holder has acquired title to the Lot pursuant to foreclosure or any proceedings in lieu of the foreclosure. Said term “Owner” shall also refer to the heirs, successors, and assigns of any Owner.

(Z) “PERMITTEES” shall mean and refer to the respective family, agents, customers, invitees, licensees, employees, servants, contractors, tenants and tenant’s agents, customers, invitees, licensees, employees, servants and contractors of each Owner, subject to applicable Regulations.

(AA) "PLANS" shall mean and refer to and encompass the plans, specifications, elevations and exterior designs of any Improvement built or to be built on any Lot, or Common Area, or of any other item so designated in the Architectural Guidelines, as well as a site plan showing building set backs and locations of all Improvements or other items so designated in the Architectural Guidelines within the Lot or Common Area.

(BB) "PLAT" shall mean and refer to those certain plats of the Cottages at Johns Island recorded in Book L08 at Pages 0091 and 0092 of the Charleston County Register of Deeds.

(CC) "PROPERTY" shall mean and refer to all property, including but not limited to, the Lots, streets or road rights-of-way and Common Area, subjected to this Declaration, which are described in Exhibit A, together with any additional land that may be developed pursuant hereto and annexed or incorporated in the Property by amendments or supplemental Declarations.

(DD) "REGISTER OF DEEDS" shall mean and refer to the office of the Register of Deeds in the county in which the Property is located.

(EE) "REGULATIONS" shall mean and refer to the guidelines, rules, policies, regulations, and procedures, including, but not limited to, the Architectural Guidelines and builder building requirements, adopted by the Developer, the Board of Directors, When Empowered, or the Architectural Control Authority, for the Community, for each Neighborhood or Specific Purpose Area, if and when designated, and for any portion of the Property.

(FF) "SPECIFIC PURPOSE AREA" when and if created, shall mean and refer to any specific group of Lots and/or Common Area and/or streets and road rights-of-way located within the Property benefiting from or being provided distinct services or maintenance not otherwise provided to or for the rest of the Community, and specifically identified and designated as a Specific Purpose Area by the Developer or the Association, When Empowered. When designating a Specific Purpose Area, the Developer or the Association, When Empowered, shall either give notice of such designation to all Owners of Lots within the Specific Purpose Area or record an instrument evidencing such designation with the Register of Deeds. Owners of Lots within a Specific Purpose Area are Members of the Association or the Master Association, if created, and the Specific Purpose Area exists under authority granted by the Developer or the Association. A Specific Purpose Area is not a Neighborhood, however the same portion of the Property may be designated a Neighborhood and a Specific Purpose Area. The Lots and/or Common Area and/or streets and road rights-of-way identified in a Specific Purpose Area may, but need not be, contiguous.

(GG) "SPECIFIC PURPOSE COMMITTEE" when and if created, shall mean and refer to a committee of Lot Owners within a Specific Purpose Area appointed by the Board of Directors, or at the option of the Board of Directors, elected by those Members located in the Specific Purpose Area, for any purpose determined by the Board of Directors, including but not limited to the creation for approval by the Board of Directors of a proposed budget and Specific Purpose Assessment for the Specific Purpose Area. The designation of a Specific Purpose Area does not require the creation of a Specific Purpose Committee.

(HH) "SUB-ASSOCIATIONS" when and if created, shall mean and refer to any other Additional Associations within the Property, all of the members of which are Members of the Association or the Master Association and which operates under authority granted by the Developer or the Association. The establishment of Neighborhoods, Neighborhood Architectural Control Authorities, Specific Purpose Areas, or Specific Purpose Committees, if and when designated, shall not be construed as creating a Master Association or Sub-Associations, unless expressly created and recognized as such by the Developer or the Association, When Empowered.

(II) "WHEN EMPOWERED" shall mean when the Developer has transferred the right of performing some function to the Board of Directors or another entity (i) by the recordation of a document with the Register of Deeds, (ii) by giving written notice to the Association at the Association's address of record, or (iii) by giving notice to the Owners attending a duly called meeting for that purpose. Except for those rights retained by the Developer in this Declaration, including, without limitation, Developer's rights as a Class "C" Member and any Class "B" Membership rights restored to the Developer for Lots that it re-acquires or additional land annexed to the Property after the termination of the Class "B" Membership, the transfer of all functions to the Association shall automatically occur upon termination of Developer's Class "B" Membership. "When Empowered" shall also mean and refer to when the Developer has temporarily delegated (as opposed to transferred) the right of performing some function to the Board of Directors, the Members, or to any other person or entity, which Developer may do without any recording or notice requirements.

## ARTICLE II USES OF PROPERTY, RESTRICTIONS AND EASEMENTS

Section 2.1 RESIDENTIAL USE OF PROPERTY. Unless otherwise designated in a supplemental Declaration filed by the Developer for additional land annexed to the Community, all Lots shall be used for single-family residential purposes only, and no commercial, business or business activity shall be carried on or upon any Lot at any time, except with the written approval of the Developer or the Board of Directors, When Empowered; provided, however, that nothing herein shall prevent the Developer, its agents, representatives, employees, or any builder of homes in the Community, approved by the Developer, from using any Lot owned or leased by the Developer or such builder of homes for the purpose of carrying on business related to the Community or related to the improvement and sale of Lots or Dwellings in the Community; operating a construction office, business office, sales office or model home, and displaying signs, and from using any Lot for such other facilities as in the sole opinion of the Developer may be required, convenient, or incidental to the completion, improvement, and sale of the Lots, Dwellings, or the Community; and provided, further that, to the extent allowed by applicable zoning laws, "home occupation," as defined in the Regulations or in the zoning ordinances of the governmental authority having jurisdiction over the Lot, may be maintained in a Dwelling located on any of the Lots as approved in writing by the Developer or the Board of Directors, When Empowered, and the governmental authority having jurisdiction over the Lot, so long as the "home occupation" complies with any and all conditions of such approvals.

Section 2.2 CONSTRUCTION IN ACCORDANCE WITH PLANS. EXCEPT AS PROHIBITED BY LAW, INCLUDING WITHOUT LIMITATION 47 U.S.C. § 303 NT, AND

RELATED FCC RULES, 47 CFR § 1.4000 (WHICH LIMITS, BUT DOES NOT ENTIRELY PROHIBIT, CONTROL BY THE ASSOCIATION OF THE SIZE AND LOCATION OF ANTENNAS AND SATELLITE DISHES), NO IMPROVEMENT SHALL BE CONSTRUCTED, ERECTED, MAINTAINED, STORED, PLACED, REPLACED, CHANGED, MODIFIED, ALTERED OR IMPROVED ON ANY LOT OR AREA OF EXTENDED LOT OWNER RESPONSIBILITY UNLESS APPROVED BY THE ARCHITECTURAL CONTROL AUTHORITY AND ANY OTHER APPROPRIATE OWNER OR APPLICABLE GOVERNMENTAL ENTITY AND THE USE OF APPROVED IMPROVEMENTS SHALL COMPLY WITH THE REGULATIONS AND ARCHITECTURAL GUIDELINES IN EFFECT FROM TIME TO TIME. NO CONSTRUCTION, RECONSTRUCTION, ERECTION, REPAIR, CHANGE, MODIFICATION SHALL VARY FROM THE APPROVED PLANS. Notwithstanding anything herein to the contrary, (a) until the termination of the Developer's Class "B" Membership, the Developer reserves the right to construct or modify any Improvements without submitting Plans to the Architectural Control Authority and without the approval of the Association, the Members or the Architectural Control Authority, and (b) if, after termination of Developer's Class "B" Membership, Developer reacquires a Lot through repurchase, foreclosure or otherwise and (c) if after termination of Developer's Class "B" Membership, Developer annexes additional property to the Community, Developer reserves the right to construct or modify any Improvements on such Lot and additional property without submitting Plans to the Architectural Control Authority and without the approval of the Association, the Members or the Architectural Control Authority.

Section 2.3 SUBDIVISION/COMBINATION OF LOTS AND ROAD USAGE. One or more Lots or parts thereof may be subdivided or combined only if approved in writing by the Developer. No Lot or Common Area may be used as a road unless approved in writing by the Developer, before or after termination of Developer's Class "B" Membership.

Section 2.4 LIVESTOCK AND PETS. Unless the following is amended by the Regulations established and amended by the Developer or by the Board of Directors, When Empowered, from time to time, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Area of Extended Lot Owner Responsibility, except that dogs, cats or other small household pets may be kept in reasonable numbers as determined by the Developer or the Board of Directors, When Empowered, in its sole discretion, subject to applicable leash laws, provided that they are not kept, bred or maintained for any commercial purpose. Such household pets must not constitute a nuisance as determined by the Board of Directors in its sole discretion within the Community or cause unsanitary conditions within the Community, and no animal kept outside the Dwelling shall be kept in a manner which disturbs the quiet enjoyment of the Community or any other Owner. While not in a fully confined area, all pets shall be restrained by leashes and no pet shall enter upon any Lot or Area of Extended Lot Owner Responsibility without the express permission of that Owner or on the Common Area without express permission of the Developer or the Board of Directors, When Empowered. The pet owner will be responsible for clean up and removal of fecal matter deposited by such pet and shall be liable for, indemnify and hold harmless any other Owner, the Developer and the Association from any loss, cost, damage or expense incurred by such Owner, the Developer or the Association as a result of any violation of this provision.

Section 2.5 OFFENSIVE ACTIVITIES. Unless the following is amended by the Regulations established and amended by the Developer or by the Board of Directors, When Empowered, from time to time, no noxious, offensive or illegal activities as determined by the Developer or the Board of Directors, When Empowered, shall be carried on upon any Lot, Area of Extended Lot Owner Responsibility, Common Area, or street and road right-of-way, nor shall anything be done thereon which is or may become an annoyance or nuisance to any Owner in the Community, including without limitation nuisances of a permanent or temporary nature, occurring on an intermittent or continual basis, and those that are a nuisance to one or more Owners in the Community.

Section 2.6 TRAILERS, TRUCKS, BUSES, BOATS, PARKING, ETC. Unless the following is amended by the Regulations established and amended by the Developer or by the Board of Directors, When Empowered, from time to time, no passenger vehicles, buses, trailers or mobile homes, motorcycles, boats, boat trailers, all terrain vehicles, go-carts, campers, vans or vehicles on blocks, unlicensed vehicles, or like vehicles shall be kept, stored, used, or parked overnight either on any street within the Community, in the Common Area, or on any Lot or Area of Extended Lot Owner Responsibility, without the approval of the Developer or the Board of Directors, When Empowered; provided, however, that passenger vehicles may be parked in approved areas on a Lot, to include garages, paved driveways, and any other area approved by the Developer or the Board of Directors, When Empowered, or as specified in the Regulations. No unsafe parking shall be allowed on any streets in the Community. The Developer or the Board of Directors, When Empowered, may in its sole discretion determine what is unsafe and issue regulations to control on and off street parking. All parking spaces contained in Common Areas shall be subject to any parking Regulations created by the Developer or the Board of Directors, When Empowered.

Section 2.7 VEHICLE USAGE. The Developer or the Board of Directors, When Empowered, may create Regulations governing the manner of usage and types of motor vehicles, including golf carts, that may be used on the streets and roadways in the Community. All Owners and their Permittees shall comply with all such Regulations and all other applicable laws and regulations and shall operate their vehicles in a safe and reasonable manner.

Section 2.8 USE OF GARAGES. Garages are to be used for parking vehicles and storage of personal property. Unless the Developer or the Board of Directors, When Empowered, gives written authorization to the contrary, no Owner shall: (i) use their garage in a manner that would prevent the immediate conversion of the garage space to accommodate parking or storage as determined by the Developer or the Board of Directors, When Empowered, (2) use their garage in such a way that creates a nuisance as determined by the Developer or the Board of Directors, When Empowered, or (3) use their garage for any other purpose that would permanently prevent parking or storage in the garage as determined by the Developer or the Board of Directors, When Empowered.

Section 2.9 EXCAVATIONS OR CHANGING ELEVATIONS. No Owner shall excavate or extract earth for any business or commercial purpose within the Property.

Section 2.10 SEWAGE SYSTEM. Sewage disposal shall be through the public or private system or by septic tank approved by appropriate State and local agencies. If there is a

public or private system serving the Community, the Owner shall be obligated to use the system unless authorized otherwise by the Developer or the Board of Directors, When Empowered.

Section 2.11 WATER SYSTEM. Water shall be supplied through a public or private system or any other system or well approved by appropriate State and local agencies. If there is a public or private system serving the Community, the Owner shall be obligated to use the system unless authorized otherwise by the Developer or the Board of Directors, When Empowered.

Section 2.12 UTILITY FACILITIES. The Developer reserves the right to approve the necessary construction, installation and maintenance of utility facilities and service lines for, on, over or under the Property or any portion thereof, including but not limited to telephone, cable television, electricity, gas, water and sewage systems, which may be in variance with this Declaration or the Regulations.

Section 2.13 MINIMUM SQUARE FOOTAGE REQUIREMENT. Unless otherwise stated in a document recorded with the Register of Deeds, the Developer may establish and amend minimum square footage requirements for Dwellings within the Community, which may differ for each Lot or group of Lots in the Community. The Developer or the Architectural Control Authority, When Empowered, shall have the right to approve or disapprove any multi-level Plan based solely on the amount of heated square footage contained within any level or floor and/or relationship of that level's or floor's footage to the total heated footage contained within the other levels of the Dwelling or Improvement or the Dwelling or Improvement in its entirety.

Section 2.14 BUILDING SETBACK REQUIREMENTS. Unless the Developer or the Architectural Control Authority, When Empowered, waives the requirement or unless a setback is otherwise shown on any Plat of the Community or unless otherwise stated in a document recorded with the Register of Deeds, the approved exterior finished face, steps, eaves and overhangs of all Improvements, including but not limited to, approved Dwellings, buildings, garages, porches, sheds, greenhouses, bathhouses, terraces, patios, decks, stoops, wing walls, swimming pools and storage buildings for related equipment (including but not limited to filters and water pumps) shall be placed on the Lot so as to meet the criteria set forth by (a) an appropriate governmental authority, and (b) the Architectural Control Authority, which may differ for each Neighborhood, if and when designated, and for any additional phases of the Community.

Section 2.15 WAIVER OF SETBACKS, BUILDING LINES AND BUILDING REQUIREMENTS. The Developer or the Architectural Control Authority, When Empowered, may waive violations of the setbacks and building lines shown on any Plat of the Community or set out in this Declaration or in the Regulations. Such waiver shall be in writing and recorded by the Owner with the Register of Deeds. A document executed by the Developer or the Architectural Control Authority, When Empowered, shall be, when recorded, conclusive evidence that the requirements hereof have been complied with. The Developer or the Architectural Control Authority, When Empowered, may also, from time to time as they see fit, eliminate violations of setbacks and boundary lines by amending said Plats. Nothing contained herein shall be deemed to allow the Developer or the Architectural Control Authority, When

Empowered, to waive violations which must be waived by an appropriate governmental authority without the Owner obtaining a waiver from such authority.

Section 2.16 YARD AND LANDSCAPING MAINTENANCE.

(a) In the event that the Owner of any residential Lot, improved or unimproved, fails to maintain their yard and overall landscaping of their Lot or Area of Extended Lot Owner Responsibility in a manner in keeping with the Declaration, as determined by the Developer or the Architectural Control Authority, When Empowered, from time to time as they see fit, the Developer or the Architectural Control Authority, When Empowered, may issue a compliance demand requiring the Owner of the residential Lot to bring the Lot or Area of Extended Lot Owner Responsibility into keeping with the Declaration, as determined by the Developer or the Architectural Control Authority, When Empowered. If the Owner of the residential Lot fails to comply within the time required by the notice, the Developer or the Association and their designees may enter upon the Lot or Area of Extended Lot Owner Responsibility, bring the Lot or Area of Extended Lot Owner Responsibility into keeping with the Community, as provided above, and levy against the Owner of the Lot an Assessment for Non-Compliance and such Assessment shall be a lien upon the Lot. The rights of the Developer under Section 2.16 shall continue after termination of the Developer's Class "B" Membership.

(b) The responsibility of an Owner of a residential Lot to properly maintain their yard and overall landscaping of their Lot and Area of Extended Lot Owner Responsibility includes, but is not limited to, the following:

- (i) prevent any underbrush, weeds, or other unsightly plants to grow upon the Lot and Area of Extended Lot Owner Responsibility;
- (ii) provide permanent vegetation, including but not limited to grass, fully and uniformly distributed over the Lot and Area of Extended Lot Owner Responsibility;
- (iii) unless approved otherwise by the Developer or the Board of Directors, When Empowered, maintain and (if they are determined to be unhealthy by the Developer or the Board of Directors, When Empowered) replace, any tree(s) or portions thereof and/or other vegetation upon the Lot or Area of Extended Lot Owner Responsibility or located within the road right-of-way, that (1) are specifically required to be removed or replaced by the Developer or the Board of Directors, When Empowered, (2) were required by the Architectural Control Authority, to have been protected during construction, or (3) were placed in this area in accordance with an approved landscape plan;
- (iv) provide proper grading and drainage on the Lot and Area of Extended Lot Owner Responsibility, in accordance with Article X of this Declaration;
- (v) prevent and repair any erosion on the Owner's Lot, Area of Extended Lot Owner Responsibility, any other Lot, or any street in the Community

caused by surface run-off from the Owner's Lot, in accordance with Article X of this Declaration; and

- (vi) providing at their own expense general maintenance, including but not limited to proper watering, insect and weed control, fertilization, pruning, regular replacement of straws and mulch, proper drainage control, etc. and other types of normal maintenance not provided by the Association, of the overall landscaping and grass for their Lot and Area of Extended Lot Owner Responsibility in compliance with the Regulations and Architectural Guidelines established by the Developer, the Board of Directors, When Empowered, and the Architectural Control Authority, When Empowered.

(c) Any entry by the Association or the Developer or their agents, employees, officers or contractors under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Developer and to the Association for the purpose of entry onto any residential Lot or Area of Extended Lot Owner Responsibility for the purpose of enforcing this Section. This provision shall not be construed as an obligation on the part of the Developer or the Association to provide any services. As provided herein, these rights may be assigned by the Developer to the Association, or other appropriate entities. The Owner shall hold harmless the Developer, its agents and employees, officers and contractors and the Board of Directors, and the Architectural Control Authority from any liability incurred arising out of correcting the Owner's breach of this Section.

Section 2.17 MAINTENANCE OF WALLS, GATES AND FENCES. For the purpose of this Section, walls, gates and fences (hereinafter, "Fencing") shall refer only to those walls, gates and fences that are not a part of a Dwelling (though they may be attached to the Dwelling). Each Owner of a Lot shall be responsible for maintaining and repairing any Fencing or portion thereof constructed for or by such Owner, whether the Fencing or portion thereof is located on such Owner's Lot or on an adjoining Lot or Common Area. With respect to Fencing located on an adjoining Lot or Common Area, the Lot Owner's responsibility shall only apply to the portions of the Fencing constructed to attach the Fencing of that Lot Owner to the existing Fencing on that adjoining Lot or Common Area.

Section 2.18 LEASES OF LOTS. Any lease agreement between an Owner and a tenant for the lease of such Owner's Lot or portion thereof, including any portion of the Dwelling or other Improvement on the Lot, shall be subject to and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles of Incorporation and By-Laws, and the Regulations. The Owner shall incorporate in any lease of any Lot, Dwelling, or Improvement a provision stating that failure to comply with the terms of such documents and Regulations shall be a default under the terms of the lease. All leases of Lots, Dwellings, or Improvements shall be in writing and a copy of the executed lease, upon written demand, must be provided to the Developer or the Board of Directors, When Empowered.

Section 2.19 STREET LIGHTING CHARGE. Each Owner shall pay a proportional share of the monthly charge for street lighting service as prescribed by the South Carolina Public Service Commission, or pay for such street lighting charge as part of the Regular Assessment as

may be determined by the Developer or the Board of Directors, When Empowered. The electric utility company may bill the Owner or the Association for this charge as part of the monthly electric utility bill.

Section 2.20 HAZARDOUS TREES. A “hazardous tree” is any tree designated as such by the Developer or the Board of Directors, When Empowered, which presents a hazard to person or property due to conditions, including but not limited to, deterioration, death, or physical damage to the root system, trunk, stem or limbs, and the direction and lean of the tree(s). Unless the responsibility for cutting and removal of a hazardous tree is specifically determined or voluntarily assumed by the Board of Directors to be the responsibility of the Association, an Owner of a Lot adjoining a Common Area shall be responsible for cutting and removing hazardous trees within the Common Area that may cause injury to person or property if such hazardous tree were to fall upon the Owner’s Lot. The determination of whether any tree may be cut, whether the tree or any portion of the tree must be removed from the site after cutting, and the location which any debris related to the cutting of the tree may be left or placed within the Common Area shall at all times be that of the Developer, the Board of Directors, When Empowered or Architectural Control Authority, When Empowered. Notwithstanding the foregoing, prior to taking any steps to cut or remove a tree, an Owner must obtain the written approval of the Developer, the Board of Directors, When Empowered or Architectural Control Authority, When Empowered. Unless some portion of the cost of the cutting or removal of a tree is assumed by the Association, the affected Lot Owner shall bear all costs associated with the cutting and removal of hazardous trees, and such cutting and removal shall at all times be subject to the Regulations and the Architectural Guidelines as in effect from time to time.

Section 2.21 PONDS. The pond(s), lakes, wetlands, detention ponds, or other water retention structures (the “Ponds”) are those portions of the Property designated on the Plat, if any, as Ponds, and shall be kept and maintained as ponds for water retention, drainage, irrigation, and water management purposes in compliance with all governmental requirements. The Ponds may be Common Area, unless otherwise designated by the Developer or the Board of Directors, When Empowered, and may be maintained, administered, and ultimately owned by the Association. Nothing in this Section, however, shall impair or limit the Developer’s or Association’s right to remove the Pond from the Property or Common Area pursuant to the rights retained by it in this Declaration. In furtherance of the foregoing, the Developer hereby reserves and grants an easement in favor of itself and the Association, throughout all portions of the Property as may be necessary for the purpose of accessing, maintaining and administering the Ponds. The Developer, or the Association, When Empowered, shall not have any obligation to repair, replace or maintain any dam or dams or any other Improvements adjoining the Ponds, unless otherwise required by applicable law.

Water levels in the Ponds may rise and fall significantly or disappear due to among other things, rainfall and fluctuations in ground water elevations within the surrounding areas. Accordingly, neither the Developer nor the Association has control over such water levels and/or ground water elevations. Each Owner, by acceptance of a deed to his Lot, hereby releases Developer, the Association, and the Board of Directors, When Empowered, from and against any and all losses, claims, demands, liabilities, damages, costs and expenses of whatever nature or kind (including without limitation, attorneys’ fees), related to, and arising out of water levels in the Pond(s). No riparian rights are granted or conveyed hereunder to any Lot adjacent to a Pond or to any Owner,

including but not limited to the right to use the water within the Pond. The rights of Owners, if any, to use any Ponds, or the water therein, are derived solely from membership in the Association and are subject to and may be limited by the Regulations.

DEVELOPER AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING BUT NOT LIMITED TO, LIFEGUARDS, FOR THE PONDS, AND ANY INDIVIDUAL USING THE POND(S) SHALL DO SO AT HIS OWN RISK AND HEREBY HOLDS DEVELOPER AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

EACH OWNER, BY THE ACCEPTANCE OF A DEED TO HIS LOT, ACKNOWLEDGES THAT THE PONDS ARE DEEP AND DANGEROUS. NEITHER THE DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (HEREINAFTER "RELEASED PARTIES") SHALL BE RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY, OR WATER LEVEL OF/IN ANY POND, CREEK, OR STREAM WITHIN THE PROPERTY EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, ANY APPLICABLE GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE RELEASED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING ON, OR OTHERWISE RELATED TO, THE POND(S), ALL PERSONS USING THE SAME DOING SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO THE LOT OR USE OF THE POND(S), TO HAVE AGREED TO RELEASE THE RELEASED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN THE POND(S).

Section 2.22 RESTRICTED WETLANDS AREAS. In addition to any restrictions placed on areas delineated as wetlands by the Army Corps of Engineers or any other applicable governmental authority, the Owners of Lots upon which wetlands are located or to which wetlands are adjacent shall be prohibited from the following:

- Filling, draining, flooding, dredging, impounding, or otherwise changing the grade or elevation, or impairing the flow or circulation of waters, or reducing their reach;
- Cutting, clearing, cultivating, burning or otherwise destroying vegetation in areas shown as wetlands;
- Excavating, erecting, or constructing any facility, releasing wastes, or otherwise doing any work in areas shown as wetlands;
- Introducing or releasing any exotic species of plant or animals into the wetland areas;
- Any other discharge or activity requiring a permit under The Clean Water Act or other water pollution control laws and regulations as may be amended from time to time; or

- Any other act that may be prohibited by any governmental authority.

Where upland buffers have been identified in association with wetlands for the purpose of mitigation in obtaining Clean Water Act permits for the development of the site, the identified buffers carry the same restrictions as delineated wetlands and may not be altered in any way without prior approval of the U. S. Army, Corps of Engineers or the South Carolina Department of Health and Environmental Control.

A Lot Owner may, at its sole cost and expense, with the express prior written approval of the Developer or the Board of Directors, When Empowered, remove or trim vegetation that the Developer or the Board of Directors, When Empowered, deems hazardous to person or property. Upon receipt of written approval to remove or trim any vegetation in a wetlands area or its identified buffer on a Lot or Common Area from the Developer or the Board of Directors, When Empowered, prior to taking any such action, the Lot Owner must then obtain any necessary approvals or permits from the applicable governmental authority having jurisdiction over such matters.

Section 2.23 EASEMENT FOR UTILITIES, ROADS AND COMMON FACILITIES. The Developer reserves unto itself, the Association, When Empowered, and their Permittees a perpetual, alienable easement and right of ingress and egress, over, upon, across and under each Lot and Area of Extended Lot Owner Responsibility and all Common Areas and Areas of Common Responsibility, if any, as are necessary or convenient for the erection, maintenance, installation, and use of electrical systems, cable television systems, irrigation systems, landscaping, telephone wires, cables, conduits, sewers, water mains, and other suitable equipment, other Improvements and buildings necessary or convenient for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities, including but not limited to privately owned television systems and other communications cable and equipment, and the Developer or the Association, When Empowered, may further cut drainways for surface water when such action may appear to the Developer or the Board of Directors, When Empowered, to be necessary in order to maintain reasonable standards of health, safety, and appearance, or to correct deviations from approved development drainage Plans, provided such easements shall not encroach on or cross under (a) existing Dwellings on a Lot, or (b) existing buildings on the Common Area unless Developer agrees to pay for the cost of the relocation or reconstruction of such Common Area building.

The Developer further reserves unto itself and its Permittees a perpetual, alienable easement and right of ingress and egress, over, upon, across and under all Common Areas and Areas of Common Responsibility as set out in Section 5.3.

Unless otherwise shown on a recorded Plat of the Community, the Developer further reserves an easement on behalf of itself and its Permittees over five feet (5') along each side Lot line of each Lot, and over five feet (5') along the rear Lot line of each Lot, and over five feet (5') along the front Lot line of each Lot, and over such other area of each Lot and Area of Extended Lot Owner Responsibility as is shown on recorded Plats of the Community, in each case for the purpose of construction, installation and maintenance of utilities and drainage and utility and drainage rights of way.

The easements and rights set forth in this Section expressly include the right to cut any trees, bushes, or shrubbery, make any grading of soil, and take any other similar action reasonably necessary to provide economical and safe utility or drainage or other installation and to maintain reasonable standards of health, safety and appearance.

The Developer further reserves unto itself, the Association, When Empowered, and their Permittees a perpetual, alienable easement and right to locate signs, entrances, landscaping, sprinklers and other Improvements related to the Common Area or Area of Common Responsibility or common facilities of the Community including, but not limited to, entrances, wells, pumping stations, and tanks, within residential areas on any walkway or any residential Lot or Area of Extended Lot Owner Responsibility.

The easements and rights set forth in this Section may be exercised by the licensee or designee of the Developer or the Association, When Empowered, but these reservations shall not be considered an obligation of the Developer to provide or maintain any such services.

No Improvements, including, but not limited to, walls, fences, paving or planting shall be erected upon any part of the Property which will interfere with the easements and rights of ingress and egress provided for in this Section, and no Owner shall take any action to prevent the Association, the Developer, or any public or private utility, or any of their agents, contractors or employees from utilizing the easements reserved herein.

**THE DEVELOPER, THE ASSOCIATION, THE ARCHITECTURAL CONTROL AUTHORITY, THEIR AGENTS, EMPLOYEES AND OFFICERS SHALL NOT BEAR RESPONSIBILITY FOR THE REPAIR OR REPLACEMENT OF ANY LANDSCAPING PLANTED, SPECIAL GRADING ESTABLISHED, OR IMPROVEMENT CONSTRUCTED WITHIN AN EASEMENT, WHETHER PLANTED, ESTABLISHED OR CONSTRUCTED INTENTIONALLY OR INADVERTENTLY AND WHETHER APPROVED OR NOT BY THE ARCHITECTURAL CONTROL AUTHORITY.**

The Developer expressly reserves the right to alter, expand or overburden any easement described in this Section. Such right to alter, expand or overburden shall be limited to such extent as will allow the Owner of the affected Lot and Improvement to convey marketable title. The rights and easements conferred and reserved herein shall be appurtenant to any property now or hereafter owned by Developer, whether or not subject to this Declaration, and shall be easements in gross of a commercial nature for the benefit of the Developer, the Association and their Permittees to serve any property whether or not subject to this Declaration.

Section 2.24 ACCESS EASEMENT BY DEVELOPER OR ASSOCIATION, WHEN EMPOWERED. For the purpose of performing its function under this or any other Article of this Declaration, the Developer reserves unto itself, the Association, When Empowered, and their Permittees a perpetual, alienable easement and right of ingress and egress, over, upon, across and under each Lot and Area of Extended Lot Owner Responsibility to (a) correct any violation of this Declaration, the Architectural Guidelines or the Regulations, (b) make necessary examinations in connection therewith, (c) respond to the request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property, and (d) in the sole discretion of the Developer or the Board of Directors, When Empowered, prevent

an anticipated request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property. Any entry by the Developer or the Association, When Empowered, or their designees under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Developer and to the Association, When Empowered, for the purpose of entry onto any residential Lot or Area of Extended Lot Owner Responsibility for the purpose of enforcing this Section.

Section 2.25 EMERGENCY ACCESS EASEMENT. The Developer reserves unto itself, the Association, When Empowered, their Permittees and to all policemen, firemen, ambulance personnel and all similar emergency personnel a perpetual, alienable easement and right of ingress and egress over, upon, across and under the Property, any part thereof, any Lot or Dwelling in the proper performance of their respective duties. Except in the event of emergencies, the rights under this Section shall be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner affected thereby, which notice may be of a general nature to the Owners of the Developer's and the Association's right of entry hereunder. The rights granted herein to the Developer and the Association include the reasonable right of entry upon any Lot, Area of Extended Lot Owner Responsibility or Dwelling to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Community. Any entry by the Association or the Developer or their designees under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Developer and to the Association for the purpose of entry onto any residential Lot, Area of Extended Lot Owner Responsibility or Dwelling for the purpose of enforcing this Section.

Section 2.26 CONSTRUCTION EASEMENT FOR THE DEVELOPER. The Developer and its duly authorized representative, agents, and employees shall have an alienable right and easement on, over, through, under and across the Property for the purpose of (a) constructing Dwellings or other Improvements on the Lots, (b) making such other Improvements to the Property as Developer, in its sole discretion, desires, (c) installing, replacing, and maintaining all Dwellings and other Improvements within the Community, including utilities servicing the Property or any portion thereof, and (d) doing all things reasonably necessary and proper in connection therewith; provided in no event shall Developer have the obligation to do any of the foregoing.

Section 2.27 FENCING EASEMENT. There shall be provided to each Lot Owner on each Lot or Common Area that adjoins the Lot of that Owner, an easement for the placement, construction and maintenance of fencing, the size, location and design of which must be approved by the Architectural Control Authority. The easement shall extend into the adjoining Lot or Common Area along the common property line between the Lot of the Owner and the adjoining Lot or Common Area no more than eighteen inches (18") or such lesser distance as may be necessary to allow the Lot Owner to connect his fencing to existing fencing on the adjoining Lot or Common Area. Such easement shall only exist when fencing has been placed or constructed on the adjoining Lot or Common Area adjacent to some portion of the property line between the Owner's Lot and the adjoining Lot or Common Area. Upon receipt of written approval for the size, design and location of the Lot Owner's fencing from the Architectural Control Authority, the placement or construction of such fencing shall not require the approval or consent of the adjoining Lot Owner or the further consent of the Association. This easement

may extend forward or rearward along the property line between the Owner's Lot and the adjacent Lot or Common Area beyond the location of existing fencing on the adjacent Lot or Common Area, if the location approved by the Architectural Control Authority for the Lot Owner's fencing requires that such fencing be extended in order to connect the fencing of the Lot Owner with the existing fencing on the adjacent Lot or Common Area.

Section 2.28 REGULATIONS. The use of the Property is and shall be subject to the Regulations as in effect from time to time. The Developer and the Board of Directors, When Empowered, may from time to time adopt, amend, change, modify or eliminate any Regulation and may waive any violation of the Regulations, in their sole discretion, without notice to the Owners. Until the termination of Developer's Class "B" Membership, the Developer may, in its sole discretion, veto any modification to the Regulations proposed or implemented by the Association; override any attempt by the Association to enforce or implement the Regulations; and require the Association to enforce and implement any provision of the Regulations. The Regulations may apply to the entire Property, to portions of the Property, or exclusively to specific Neighborhoods or Specific Purpose Areas, if and when designated. Except as otherwise specifically set forth herein, the Regulations may modify the use rights and restrictions set forth in this Declaration and may be more or less restrictive than required by applicable law; provided, however, that each Owner shall at all times be required to comply with applicable law in addition to complying with this Declaration.

Section 2.29 NO ENFORCEMENT OBLIGATION; DELEGATION; WAIVERS AND VARIANCES.

(a) Neither the Developer nor the Association shall have any responsibility to police or enforce any violations of this Declaration or the Regulations and shall have no liability for any violations hereof or for the failure to create, monitor, or enforce any Regulations.

(b) Until the termination of Developer's Class "B" Membership, the Developer may, in its sole discretion, delegate, temporarily or for the period that these rights and authority are reserved to the Developer, any and all rights of Developer set out herein.

(c) Until the termination of Developer's Class "B" Membership, the Developer and, thereafter, the Board of Directors, may, in its sole discretion, waive any violation of this Declaration or the Regulations and grant variances to the covenants and use restrictions set forth herein or therein without the consent of the Members.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 3.1 MEMBERSHIP. It is mandatory that every person or entity who is an Owner of any Lot shall be a Member of the Association.

Section 3.2 MEMBERSHIP CLASSES. The Association shall have three (3) classes of Membership.

(a) CLASS "A". Class "A" Members shall be all Owners excepting the Developer. Class "A" Members shall be entitled to one (1) vote for each Lot they own. When more than one (1) person holds such interest or interests in any Lot, the entire vote attributable to such Lot shall be exercised by one (1) individual who is duly authorized in writing by all of the Owners of that Lot. In no event shall more than one (1) vote or a partial vote be cast with respect to any such Lot. When more than one person holds such an interest or interests in a Lot, it shall be the responsibility of those Owners to provide the Developer or the Association with written notification, with the signatures of all of those persons owning an interest in the Lot affixed, of the name and mailing address of that person authorized to receive notification from the Association and to cast said vote. Class "A" Membership shall be mandatory for all Owners except the Developer and may not be separated from ownership of any Lot.

(b) CLASS "B". The sole Class "B" Member shall be the Developer. The Class "B" Member shall be entitled to cast the greater of four (4) votes for each Lot for which it holds title or one more vote than the total votes of the Class "A" Members. Class "B" Membership shall end and Class "C" Membership shall automatically begin when (i) both (A) one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, and (B) Developer no longer owns any of the Property; or (ii) at such time as the Developer voluntarily relinquishes its Class "B" Membership in writing to the Association; in each case subject to the rights of the Developer to reinstate the Class "B" Membership upon reacquiring of any Lot or Common Area or annexation of additional land to the Property as set out in the Declaration. In addition to any and all rights granted to it in this Declaration, the Developer shall enjoy all of the rights granted to the Class "C" Member.

(c) CLASS "C". The sole Class "C" Member shall be the Developer. The Class "C" Member shall have no voting rights and no assessment obligations. The Class "C" Member shall enjoy certain limited rights under this Declaration, the By-Laws, and the Regulations, including without limitation the right to: (1) obtain access to, and electronic and/or paper copies of, Association's books and records, including financial and membership data; (2) exercise the Developer's enforcement powers pursuant to Section 11.5 of this Declaration, and (3) call Special Meetings of the Association on any topic or issue it sees fit in its sole discretion, although the Class "C" Member would not be entitled to vote at said meeting. Class "C" Membership shall continue after the termination of the Class "B" Membership and shall only terminate at the voluntary discretion of the Developer, although there is no requirement that it be terminated.

#### ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREA

Section 4.1 ADDITIONAL RIGHTS AND EASEMENTS IN THE COMMON AREA. In addition to and without limitation of any other rights and easements granted to or reserved by the Developer or the Association in this Declaration, the following rights and easements are hereby granted to and reserved by the Developer, the Association and/or certain other third parties, as applicable:

(a) (i) The right of the Developer and of the Association, When Empowered, to dedicate, transfer, or convey, without the approval of the Members, all or any part of the Common Area, with or without consideration, to any governmental body, district, agency, or authority, or to any utility company, (ii) the right of the Developer to convey, with or without consideration, all or any part of the Common Area to any third party without the approval of the Members, and (iii) the right of the Association, When Empowered, to convey, with consideration, all or any part of the Common Area to a third party upon the affirmative vote of at least a majority of the total votes of the Members cast at a duly called meeting of the Members or pursuant to a recorded resolution, consent or ballot signed by Members holding at least a majority of the total votes of the Members. In connection with any dedication, transfer or conveyance of the Common Area as set forth above, the Developer and the Association, When Empowered, reserve the right to terminate any easement previously granted to the Members in such portion of the Common Area so dedicated, transferred or conveyed.

(b) The right of the Developer at any time and of the Association, When Empowered, to grant and reserve easements and rights of way through, under, over, and across Common Area, for the installation, maintenance, and inspection of roads, lines and appurtenances for public and private water, sewer, drainage, and other utility services, including electricity, phones, gas, a cable or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights of way through, over and upon and across the Common Area for the operation and maintenance of the Common Area.

(c) The right of the Developer and of the Association, When Empowered, to grant conservation easements through, under, over, and across any portion of the Common Area. The Association shall grant such conservation easements over Common Areas as directed by the Developer, regardless of whether or not the Developer still owns any portion of the Property. The Developer hereby reserves the right to enter any portion of the Common Area and perform modifications to it based on conservation or preservation of environmentally sensitive areas, regardless of whether or not the Developer still owns any portion of the Property.

(d) The right of Permittees to ingress and egress in and over those portions of Common Area that lie within any private roadways, parking lots and/or driveways (and over any other necessary portion of the Common Area in the case of landlocked adjacent Owners) to the nearest public roadway.

(e) The right of the Board of Directors, When Empowered, in accordance with applicable law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and, in pursuance thereof, to mortgage or encumber the Common Area.

(f) The right of the Developer, and of the Board of Directors, When Empowered, to restrict Common Area located within a Specific Purpose Area for the exclusive use and enjoyment of only those Owners who own Lots in the Specific Purpose Area.

(g) The right of parties to any Cost Sharing Agreement to access and use the Common Area as set forth in such Cost Sharing Agreement.

