

Prepared by / Upon recording, please return to:

Jo Anne P. Stubblefield Page 291
Hyatt & Stubblefield, P.C.
1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

INDEXING NOTE:

Please cross-reference to: Book R 478

BOOK L 571PG061

ABOVE SPACE FOR RECORDER'S USE

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
THE ELMS OF CHARLESTON**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR THE ELMS OF CHARLESTON ("**Second Amended Declaration**") is made by The Elms Homeowners Association, a South Carolina nonprofit corporation ("Association").

WITNESSETH:

WHEREAS, on February 19, 1988, The Elms of Charleston, Inc. n/k/a/ PAVCO Industries, Inc. (the "Original Developer") filed a Declaration of Covenants and Restrictions which was recorded in the R.M.C. Office for Charleston County, South Carolina, in Book R172, Page 568, et seq. (the "Original Declaration"); and

WHEREAS, the Original Declaration was subsequently amended by an Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for The Elms of Charleston, which was recorded in Book R 478, Page 291, et seq., in the Office of Register of Deeds for Charleston County, South Carolina, which has been further amended by that Amendment to the Amended and Restated Declaration of Covenants, Restrictions and Easements for The Elms of Charleston recorded in Book X516, Page 458, et seq. (as amended, the "Existing Declaration"); and

WHEREAS, the real property described in the Existing Declaration, as it may be expanded by amendment, constitutes a residential community known as The Elms of Charleston (the "Development"); and

WHEREAS, the Existing Declaration provides for administration of the Development and enforcement of the Existing Declaration by the Association; and

WHEREAS, the Association desires to further amend the Existing Declaration in various respects, and to restate it in its entirety as so amended; and

WHEREAS, pursuant to Article VIII, Section 1(a) of the Existing Declaration, when the individual Owners gain control of the Development, the Existing Declaration may be amended by a 60% vote of the Members voting, provided that the written consent of the Developer is required if the proposed amendment would, among other things, materially modify any use or access rights with regard to the real property comprising the Development; and

WHEREAS, Article III, Section 4(a) provides that the right to elect a majority of the members of the Association's Board of Directors shall pass from the Developer to the individual Type A, B, and C members at the time that the individual owners have cumulative votes in excess of seventy-five percent (75%) of the total votes in the Association; and

WHEREAS, individual owners currently hold cumulative votes in excess of seventy-five percent (75%) of the total votes in the Association and have gained control of the Development through their election of a majority of the members of the Association's Board of Directors; and

WHEREAS, the Original Developer has assigned various rights under the Existing Declaration to Summerville Homes, LLC ("Builder"); and

WHEREAS, this Second Amended Declaration has been approved by at least 60% of the votes of Members of the Association cast in person or by proxy at a duly called meeting of the Association held on October 20, 2005, at which a quorum was present; and

WHEREAS, the Builder has also approved this Second Amended Declaration, as evidenced by its written consent attached hereto;

NOW, THEREFORE, the Existing Declaration is hereby amended and restated as set forth in this Second Amended Declaration (hereafter, the "Declaration"), which shall run with and encumber the title to all real property comprising the Development (as defined in Article I), shall govern the development, use, and occupancy of such property, and shall be binding upon the Association and the present and future owners of any portion of such property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of such property.

BK L 571PG063

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
THE ELMS OF CHARLESTON**

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ARTICLE I DEFINITIONS

Capitalized terms used in this Declaration shall have the meaning described in the paragraph where they first appear in bold print or the meaning set forth below. All other terms shall have their usual, commonly accepted definitions.

(a) **"Association"**: The Elms Homeowners Association, a South Carolina nonprofit mutual benefit corporation, its successors and assigns.

(b) **"Board"** or **"Board of Directors"**: the governing body of the Association, elected as provided in the By-Laws.

(c) **"By-Laws"**: the By-Laws of The Elms Homeowners Association adopted by its Board of Directors, as they may be amended.

(d) **"Common Property"**: any real property and facilities that the Association now or hereafter owns, holds, or leases for the common use or benefit of the Owners, including the roadways within the Development, and any easements in favor of the Association, provided, however, that any property in which the Association holds only a leasehold interest shall lose its character as Common Property upon the expiration of such lease.

(e) **"Condominium Unit"**: a Dwelling Unit within a condominium or horizontal property regime located within the Development, as described in the legal documents establishing such condominium or horizontal property regime and recorded in the Office of the Register of Deeds for Charleston County, South Carolina.

(f) **"Declaration"**: this Second Amended and Restated Declaration of Covenants, Restrictions, and Easements for The Elms of Charleston, as it may be amended.

(g) **"Development"**: the real property subject to this Declaration and comprising the residential development known as The Elms of Charleston, being legally described on Exhibit "A" to this Declaration, as it may be expanded by amendment of this Declaration.

(h) **"Development Unit Parcel"**: any undeveloped parcel of land within the Development, other than an undeveloped Lot, which is intended for further subdivision into smaller units such as Lots or Condominium Units.

(i) **"Dwelling Unit"**: any building or unit within a building located in the Development and intended for use and occupancy by a single family, including without limitation, any single family detached dwelling, garden home (patio or zero lot line), condominium unit, or townhome.

(j) **"Elms of Charleston"**: the Development.

(k) **"Governing Documents"**: this Declaration, the By-Laws, the Articles of Incorporation of The Elms Homeowners Association as filed with the Secretary of State of the

State of South Carolina, the Association's rules adopted pursuant to this Declaration and the By-Laws, and any architectural guidelines adopted by the Architectural Review Committee, all as they may be amended from time to time.

(l) **"Lot"**: a parcel of land depicted on a recorded subdivision plat of any portion of the Development and improved or intended for improvement with a single Dwelling Unit. The term shall not include Common Property.

(m) **"Master Plan"**: the Master Land Use Plan for the Development, as it may be revised by the Builder from time to time subject to any necessary governmental approvals.

(n) **"Member"**: a person or entity subject to membership in the Association, as provided in Article III, Section 1.

(o) **"Occupant"**: any individual who temporarily or permanently resides in a Dwelling Unit. The terms "permanent Occupant" and "Qualifying-Occupant" shall be defined as described in Article II, Section 4.

(p) **"Owner"**: one or more Persons who hold record title in fee simple to a Lot, Condominium Unit, or Development Unit Parcel within the Development by virtue of a deed recorded in the Office of the Register of Deeds for Charleston County, South Carolina, but excluding any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure. The term "Owner" shall not include any lessee or tenant holding a lease on a Lot, Condominium Unit, or Development Unit Parcel, whether or not the lease is recorded.

(q) **"Person"**: an individual or a legal entity.

(r) **"Property"**: a Lot, a Condominium Unit, or a Development Unit Parcel.

ARTICLE II DEVELOPMENT, MAINTENANCE, USE AND OCCUPANCY

Section 1. Development.

(a) **Development, Marketing and Sale Rights.** The Builder shall retain the rights described in Exhibit "C" so long as it owns any Property primarily for development and/or sale. Thereafter, the Board of Directors may amend this Declaration without the consent of the Members or Builder for the purpose of deleting Exhibit "C."

(b) **Subdivision of Property.** Except as provided in Exhibit "C," no Owner shall further subdivide any Property without the prior written consent of the Board.

(c) **Combination of Lots.** An Owner who owns two or more contiguous Lots improved with a single Dwelling Unit or two or more contiguous Condominium Units combined for use as a single Dwelling Unit shall continue to pay full assessments for both Lots or Condominium Units and shall be entitled to vote for each Lot or Condominium Unit owned,

notwithstanding their combined use; provided, if a single Dwelling Unit is constructed on two Lots straddling the common boundary line so as to preclude any future separation of ownership or construction of a second Dwelling Unit, then notwithstanding anything to the contrary in this Declaration or the By-Laws, the assessment for the combined Lots shall be set at one hundred and thirty-three percent (133%) of the rate charged for a single Lot and the Owner of the combined Lots shall be continue to be entitled to one vote for each Lot.

(d) **Improvement of Lots.** No building or other improvement of any kind shall be constructed upon or plated upon any Lot except as specifically authorized by the Architectural Review Committee established pursuant to Article VII ("ARC"), in accordance with the procedures set forth in that Article. Lots may be used only for the construction of single family residential dwellings, but including garden and patio homes and zero lot line or duplex type construction. No more than one (1) building may be located on any Lot and shall not exceed one (1) story in height. No portion of any building or other structure shall be located on or protrude into any area between any property line and the building setback line or buffer zone line relating to such property line, as shown on the initial plat or any supplemental plat, except as specifically authorized by the ARC. Following approval of the initial plans for any given Dwelling Unit, no substantial changes in the elevation of the Property upon which such Dwelling Unit is to constructed shall be made without the approval of the ARC.

(e) **Temporary Structures.** No mobile home, modular or manufactured home, house trailer, outbuilding, or any temporary structure shall be placed on any Lot either temporarily or permanently, except that the Builder may utilize such structures for temporary space during construction activity in the Development.

(f) **Minimum Size of Dwelling Units; Parking Accommodations.** Dwelling Units built on Lots shall have a minimum of nine hundred (900) square feet of heated living area. Each Dwelling Unit shall have an accommodation (but not necessarily a garage) for parking at least one (1) vehicle, which accommodation shall contain at least one hundred eighty (180) square feet of parking area.

(g) **Modifications and Reconstruction.** No change or addition shall be made to any building or structure erected on any Lot without the prior approval of the ARC, as set forth in Article VII. In the event any building is destroyed by fire or other casualty, any substitute or new building constructed in its place, or any repair or restoration of the damaged building, shall be of similar design, architecture, appearance, workmanship and materials as the destroyed structure; and shall be subject to the approval of the ARC.

Section 2. Maintenance.

Except to the extent that the Association or any other owners' association is responsible for such maintenance pursuant to Article VI of this Declaration, each Owner shall be responsible for maintaining his or her Property, at the Owner's expense, in a neat and attractive manner, and in good condition and repair, so as to insure that the exterior appearance of the Property is consistent with the standards of appearance and quality established by this Declaration and the ARC.

Section 3. General Restrictions on Use.

(a) Each Property shall be restricted to use for residential purposes only, except that a person or persons residing in the Dwelling Unit may conduct business activities ancillary to such residential use provided that the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of the Dwelling Unit;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Dwelling Unit by employees who do not reside in the Dwelling Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Development; and

(iv) is consistent with the residential character of the Development and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

The term "business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer 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.

(b) No offensive or noxious activity may be carried on in any portion of the Development.

(c) No signs or advertising displays, including signs or displays advertising the sale of Lots or Dwelling Units, may be placed on any Lot or Dwelling Unit, or in any window of a Dwelling Unit, except that a small security system decal may be placed on windows. No commercial sign or logo shall be displayed on any Owner or Occupant's vehicle parked within the Development overnight or for more than twelve (12) consecutive hours; provided, this shall not preclude parking of official government vehicles in the Development.

(d) No animals, livestock, or poultry of any kind shall be raised, bred or kept in the Development, except that dogs, cats or other common household pets may be kept in a Dwelling Unit so long as they are not kept, bred, or maintained for any commercial purpose. All such pets must be kept on a leash under the control of a responsible person at all times when outside the Dwelling Unit, except when on the pet owner's Lot and under the supervision of a responsible person. Pets shall not be allowed to become a nuisance or disturb the Occupants of other Dwelling Units. The pet owner shall promptly remove and properly dispose of any pet waste deposited by its pet anywhere in the Development, including streets, other Common Property, and the pet owner's Lot.

(e) No garbage, trash, or refuse shall be dumped or disposed of upon any portion of the Development. Household garbage, trash, and recyclables shall be stored in appropriate containers and kept inside a garage or otherwise out of public view, except during such times as the Board may designate when they may be placed at the curb for pickup.

(f) Garden hoses shall be stored in an inconspicuous manner.

(g) No burning of leaves or trash outside of fireplaces or receptacles specifically designed for burning shall be permitted.

(h) No fences, walls, hedges, shrubs, trees or other vegetation shall be allowed to obstruct the view of traffic at any driveway, road, or any intersection of any road within the Development. Trees and shrubs located near intersections shall be trimmed and maintained so that the branches and foliage do not obstruct the view of traffic.

(i) Occupants may not park their vehicles on the streets in the Development except for emergencies. Visitors and guests of Occupants may park their vehicles (excluding motor homes) on the street for short durations so long as they do not impede the flow of traffic, block access to any Dwelling Unit, create a safety problem, or inconvenience Occupants of other Dwelling Units. No vehicle shall be regularly parked in a street or driveway of a Lot overnight or for an extended period of time. No vehicle shall be parked in front of any fire hydrant, in front of the clubhouse entrance, on any undeveloped Lot, or on any portion of the Common Property or private property other than in designated parking places or driveways.

(j) No unlicensed or inoperable vehicle shall be parked in any driveway, street, or elsewhere within the Development.

(k) No area within the Development shall be used for vehicle repair work, whether performed by the Owner or others.

(l) All boats and equipment utilized with boats, including boat trailers, and all vehicles other than passenger automobiles, shall be kept under suitable cover so as to screen the item from view, such as in a garage or carport.

(m) All garage doors must be kept closed except when in use for moving vehicles and other items to and from the garage or when working in the garage or yard; provided, however, during the summer, the garage door may be left open a maximum of 10 inches for ventilation.

(n) When visible from the street, yard ornaments and objects must be tasteful and limited in number.

(o) A reasonable number of outdoor seasonal holiday decorations are allowed from November 15th to January 15th.

Section 4. Occupancy of Dwelling Units.

(a) **General.** The Dwelling Units within the Development are intended for the housing of persons 55 years of age or older, although younger persons are not restricted from

occupying a Dwelling Unit along with a person fifty-five (55) years of age or older so long as such co-occupancy is in compliance with this Section 4. In addition, certain exceptions may be made pursuant to Section 4(b)(i). The provisions of this Section are intended to be consistent with, and are set forth in order to comply with, the Fair Housing Act, 42 U.S.C. Sec. 3601, et seq., and the South Carolina Fair Housing Law, SC Code of Laws §31-21-10, et seq., as such laws are amended from time to time (collectively, the "Fair Housing Acts"), regarding discrimination based on familial status. The Association, acting through its Board, shall have the power to amend this Section 4, without the consent of the Members or any other person, for the purpose of making this" section consistent with the Fair Housing Acts, the regulations adopted pursuant thereto, and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this section.

(b) Restrictions on Dwelling Unit Occupancy.

(i) Each occupied Dwelling Unit shall at all times have as a permanent Occupant at least one person who is fifty-five (55) years of age or older (the "Qualifying Occupant"), except that:

(A) in the event of the death of a person who was the sole Qualifying Occupant of a Dwelling Unit, or the illness or disability of the sole Qualifying Occupant requiring their transfer to a health care facility, nursing home, or assisted living, personal care, continuing care or similar facility providing assistance with daily personal needs and/or health care, the spouse of such Qualifying Occupant and any other person permitted to occupy the Dwelling Unit under this Section 4 may continue to occupy the Dwelling Unit provided that the provisions of the Fair Housing Acts and the regulations adopted thereunder are not violated by such occupancy;

(B) this requirement shall not apply to any Dwelling Unit which was occupied on November 22, 2004 but which did not have a Qualifying Occupant as a permanent occupant on such date, or which is occupied by persons under the age of eighteen (18) on such date, until such time as the persons occupying the Dwelling Unit on November 22, 2004 sell, lease, or otherwise cease to maintain the Dwelling Unit as their residence;

(C) Builder may request, and upon such request the Board may grant, an exception to this requirement to permit occupancy of a Dwelling Unit purchased from Builder after November 22, 2004 by any person who is at least 50 years of age and whose parent or sibling is a permanent occupant of an adjacent Dwelling Unit, provided that the requirements of subsection (ii) of this Section 4(b) and the requirements for exemption from the Fair Housing Acts would still be met. Builder shall give the Board at least 7 calendar days' prior written notice of its desire to sell a Dwelling Unit with such exemption and such exemption shall be deemed granted unless the Board notifies Builder in writing within such 7 calendar day period that such occupancy would be in violation of subsection (B) or would exceed the requirements for exemption from the Fair Housing Acts;

(D) In addition to the above, Builder and any other Owner may request in writing that the Board of Directors make an exception to the requirements of this Section 4(b) with respect to the Occupants or proposed Occupants of his or her Dwelling Unit. The Board

may adopt and publish rules and policies for considering and granting such requests, including policies regarding the form of such request and the information that must be provided with such request. The Board shall respond to any such request within 7 calendar days after receipt of such request and all information required to accompany such request, as specified by Board rules and policies. The Board of Directors may, but shall not be obligated to, grant exceptions under this subsection (D) in its sole discretion, provided that the requirements for exemption from the Fair Housing Acts would still be met.

For purposes of this Section 4(b)(i), an Occupant shall not be considered a "permanent Occupant" unless such occupant considers the Dwelling Unit to be his or her legal residence and actually resides in the Dwelling Unit for at least six (6) months during every calendar year or such shorter period as the Dwelling Unit is actually occupied by any person.

(ii) No Dwelling Unit shall be occupied by any person under the age of eighteen (18), except that one person under the age of eighteen (18) may occupy a Dwelling Unit if the Board reasonably determines that such occupancy is necessary to provide reasonable accommodation for the health care needs of the person's handicapped parent or grandparent who would be unable to continue to reside in the Dwelling Unit without such person's care. For purposes of this Section 4(b), a Dwelling Unit shall be deemed to be "occupied" by any person who stays overnight in the Dwelling Unit more than forty-five (45) days, consecutive or nonconsecutive, in any 12-month period, except that the Board may approve additional or longer overnight stays, not to exceed ninety (90) days in any 12-month period, by grandchildren of a permanent Occupant if the Board determines, in its judgment, that the grandchildren's presence and behavior in the Development during the initial forty-five (45) days permitted has not been disruptive or inconsistent with the retirement character of the Development.

(iii) Nothing in this Section 4(b) is intended to restrict the ownership of or transfer of title to any Dwelling Unit; however, no Owner may occupy the Dwelling Unit unless the requirements of this Section 4(b) are met, nor shall any Owner permit occupancy of the Dwelling Unit in violation of this Section 4(b).

(c) Change in Occupancy; Sales and Leases.

(i) Any lease or other occupancy agreement or contract of sale relating to a Dwelling Unit shall be in writing, shall be signed by the tenant or purchaser, and shall include a statement in conspicuous type that the Dwelling Units within the Development are intended for the housing of persons fifty-five (55) years of age or older, as set forth in Section 4(a) of this Declaration. Owners shall clearly disclose such intent to any prospective tenant, purchaser, or other potential Occupant of the Dwelling Unit. Every lease of a Dwelling Unit shall provide that failure to comply with the requirements and restrictions of this Section 4 shall constitute a default under the lease.

(ii) In the event of any change in occupancy of any Dwelling Unit as a result of a transfer of title, a lease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Dwelling Unit shall immediately notify the Board of Directors in writing and provide to the Board the names and ages of all Occupants of the Dwelling Unit immediately following such change in occupancy and such other

information as the Board may reasonably require to verify the age of each Occupant. In the event that an Owner fails to notify the Board and provide all required information within 10 days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Dwelling Unit for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the Occupants continue to meet the requirements of Section 4(b), in addition to all other remedies available to the Association under this Declaration and South Carolina law, which may include dispossession or eviction proceedings, if and to the extent authorized under South Carolina law.

(iii) Within thirty (30) days after the Qualifying Occupant of a Dwelling Unit, or any other Occupant granted an exemption pursuant to Section 4(b)(i), ceases to be a permanent Occupant of the Dwelling Unit, the remaining Occupants shall vacate the Dwelling Unit unless the Board has granted an exception for the remaining Occupants pursuant to Section 4(b)(i).

(d) Monitoring Compliance; Appointment of Attorney-in-Fact.

(i) The Association shall maintain age records on all Occupants of Dwelling Units. The Board of Directors shall adopt and publish policies, procedures, and rules to monitor and maintain compliance with this Section 4, including policies regarding visitors, updating of age records, the granting of exemptions pursuant to Section 4(b)(i), and enforcement. The Association shall periodically distribute such policies, procedures, and rules to Owners and make copies available to Owners, their tenants, and holders of security interests in any Dwelling Unit upon reasonable request.

(ii) The Association shall have the power and authority to enforce this Section 4 in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the Occupants of the Dwelling Units, requiring copies of birth certificates or other proof of age for each Occupant of the Dwelling Unit to be provided to the Board on a periodic basis, and taking action to evict the Occupants of any Dwelling Unit which is not in compliance with the requirements and restrictions of this Section 4. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT, OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER DWELLING UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION 4. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Dwelling Unit that, in the judgment of the Board, are reasonably necessary to monitor compliance with this Section 4.

(iii) Each Owner shall be responsible for ensuring compliance of its Dwelling Unit with the requirements and restrictions of this Section and the rules of the Association adopted hereunder by itself and by its tenants and other Occupants of its Dwelling Unit. EACH OWNER, BY ACCEPTANCE OF TITLE TO A DWELLING UNIT, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION THAT MAY ARISE FROM FAILURE OF SUCH OWNER'S DWELLING UNIT TO SO COMPLY. In addition, the Association shall be entitled to recover all attorneys fees and costs actually incurred in enforcing

this Section 4 from the Owner of the Dwelling Unit that is not in compliance, whether or not suit is filed.

Section 5. Leasing Restrictions.

(a) **Purpose; Definition.** In order to preserve the character of The Elms of Charleston as a residential community of predominately Owner-occupied homes and to facilitate the financing of Dwelling Unit purchases by maintaining the Development as one which is substantially Owner-occupied, leasing of Dwelling Units shall be prohibited except in strict compliance with this Section 5. "Leasing," as used in this Declaration, shall mean the regular, exclusive occupancy of a Dwelling Unit by person(s) other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument, except that co-occupancy with the Owner as part of the same household by a roommate, family member, or caregiver shall not constitute leasing.

(b) **Leasing Approval; Limitation.** All leasing shall be subject to prior approval of the Board as provided in this Section 5. The Board shall not approve the proposed lease of a Dwelling Unit if such lease would result in more than three percent (3%) of the total number of Dwelling Units being subject to a lease, except that this limitation shall not apply to:

(i) leases of Dwelling Units in effect on the date of recording of this Second Amended and Restated Declaration of Covenants, Restrictions and Easements;

(ii) the lease by the holder of a first priority mortgage or a secondary priority purchase money mortgage who becomes the Owner of the Dwelling Unit pursuant to foreclosure of its mortgage or by deed or other proceeding in lieu of foreclosure;

(iii) an Owner to whom the Board has granted a hardship exception, but only for such duration as the Board reasonably determines is necessary to prevent undue hardship. The Board may, but shall not be obligated to, allow leasing of a Dwelling Unit in excess of the three percent (3%) limitation to avoid undue hardship to the Owner, which may include, but need not be limited to, the following situations: (A) the Owner suffers from a financial, medical, or other personal hardship that renders the Owner unable to reside in his Dwelling Unit; (B) the Owner must relocate his residence outside of the greater Charleston, South Carolina area and is unable, within six (6) months from the date the Dwelling Unit was placed on the market for sale, to sell the Dwelling Unit at or above the current appraised market value, after having made reasonable, good faith efforts to do so; or (C) the Owner dies and the Dwelling Unit is being administered by his estate.

(c) **Approval Procedures.** To ensure that the leasing limitation is not exceeded, any Owner who desires to lease his or her Dwelling Unit must first send a written request to the Board of Directors requesting approval to lease the Dwelling Unit. Within thirty (30) days after receipt of such request, the Board shall notify the Owner as to whether such request is granted or denied. If the limitation set forth in subsection (b) above would not be exceeded by such lease, the Board of Directors shall not unreasonably withhold its approval. To ensure that the opportunity to lease Dwelling Units is provided in a fair and equitable manner, the Board of

Directors may, from time to time, establish such rules or regulations as it deems desirable to effectuate the purposes of this Section 5.

(d) **Time Period in Which to Lease.** If the Board has granted an Owner permission to lease his or her Dwelling Unit, the Owner shall have ninety (90) days from the date of the Board's notice in which to enter into a bona fide lease of the Dwelling Unit or such permission shall be deemed revoked. Upon the termination or cancellation of an existing lease, approval to lease the Dwelling Unit shall automatically terminate and the Owner must reapply for approval to lease if the Owner desires to again lease the Dwelling Unit.

(e) **Waiting List.** At such time as three percent (3%) of all Dwelling Units are being leased, the Board of Directors may establish a waiting list for Owners desiring to lease their Dwelling Units. When the percentage of Dwelling Units being leased falls below three percent (3%), the Board shall notify the Owner at the top of the waiting list of the availability of leasing approval.

(f) **Authorized Leases.** To the extent that the Board has authorized the leasing of a Dwelling Unit, the following provisions shall apply to such leasing:

(i) **Written Lease; Form and Content.** The lease shall be in writing, in a form and content acceptable to the Board of Directors and in compliance with this subsection (f), and shall be signed by the parties. A copy of the lease shall be provided to the Board of Directors prior to the tenant taking occupancy of the leased Dwelling Unit.

(ii) **Minimum and Maximum Term.** The lease shall provide for a minimum initial term of not less than one (1) year and shall not exceed a term of two (2) years, including any renewal terms or extensions. No transient tenants shall be accommodated in any Dwelling Unit.

(iii) **Entire Dwelling Unit.** The lease shall entitle the tenant to occupy the entire Dwelling Unit; no individual rooms shall be leased. This shall not preclude an Owner from restricting the tenant's access to a closet, attic or similar storage area of reasonable size where the Owner may store the Owner's personal property.

(iv) **No Subleasing or Assignment.** The lease shall expressly prohibit subleasing or assignment without prior written approval of the Board.

(v) **Occupants Bound by Governing Documents.** The lease shall include a provision by which the tenant acknowledges receipt of a copy of the Governing Documents for The Elms of Charleston and agrees that all Occupants of the leased Dwelling Unit shall be bound to comply with such Governing Documents and shall be responsible for ensuring compliance by their guests and invitees. The Board shall make a copy of the Governing Documents available to the Owner for a reasonable fee and the Owner shall provide a copy of the Governing Documents to the tenant prior to execution of the lease. The Owner shall be responsible for ensuring compliance with the Governing Documents by the tenant, all Occupants of the leased Dwelling Unit, and their guests.

(vi) **Attorney-in-Fact.** The lease shall state that the Owner irrevocably appoints the Board of Directors of The Elms Homeowners Association as the Owner's attorney-in-fact during the term of the lease to seek, at the Owner's expense, the eviction of the tenant, equitable relief, and/or damages from the tenant in the event of any breach of the lease or violation of the Governing Documents by the tenant or the Occupants of the leased Dwelling Unit.

(vii) **No Landlord-Tenant Relationship with Association.** The lease shall contain an acknowledgement by the tenant that no landlord-tenant relationship exists between the Association or its Board of Directors and the tenant.

(viii) **Use of Common Property.** The Owner of a leased Dwelling Unit transfers and assigns to the tenant, for the term of the lease, all rights and privileges that the Owner has to use recreational facilities within the Common Property.

The provisions of this subsection (f) shall be deemed to be part of any lease of a Dwelling Unit and shall be binding on the parties, whether or not expressly set forth in the lease.

ARTICLE III EASEMENTS

Section 1. Easement for Access over Roads.

There shall be a perpetual, non-exclusive easement and right-of-way appurtenant to each Property and the Common Property for ingress, egress, and access over the roads within the Development, and through any entry gates, for vehicular and pedestrian access between such Property, the Common Property, and public streets outside of the Development. Such easement may be exercised by the Association, the Owners, their tenants, other Occupants of any Property, and their respective guests and invitees, by all government officials and public safety officers in the performance of their official duties, and by employees of the United States Postal Service acting in their official capacities.

Section 2. Owners' Easement for Use and Enjoyment of Common Property.

Every Owner shall have a nonexclusive right and easement for use and enjoyment of the Common Property, including, without limitation, the clubhouse, roads, rights-of-way and pedestrian areas located on the Common Property, which shall be appurtenant to and shall pass with the title to such Owner's Property, subject to the following:

(a) the provisions of the Governing Documents, including such rules and regulations as the Association may adopt from time to time;

(b) the right of the Association to charge reasonable assessments as provided in Article V for repairs, maintenance, insurance, operation, and protection of the Common Property and to establish reserves for major repairs or improvements, and assessments for acquisition and

improvement of any additional Common Property that may be granted to or purchased by the Association;

(c) the right of the Association to suspend an Owner's voting rights and rights to use the Common Property for any period during which an assessment against the Owner's Lot remains delinquent;

(d) the right of the Association to limit guest use of the Common Property and to charge guest fees as the Board deems appropriate;

(e) the right of the Association to establish an outside membership program or otherwise extend use privileges to individuals who do not own Property in the Development upon such terms and payment of such fees as may be approved by a majority vote of the Owners; and

(f) the right of the Association to dedicate or transfer all or any part of the Common Property to any person, public or private group, corporation, agency, authority or utility for such purposes and subject to such conditions as may be approved by majority vote of the Owners.

Any Owner may delegate, in accordance with the By-Laws, the Owner's right to use and enjoy the Common Property to the members of his or her family, the tenants of the Owner's Dwelling Unit, if leased, and their respective guests, subject to such rules and regulations as the Board may establish. The Owner of a Dwelling Unit which is leased shall be deemed to have delegated all rights to use the recreational facilities within the Common Property to the tenant and other Occupants of the leased Dwelling Unit.

Section 3. Easements for Access, Drainage and Utilities.

In addition to such easements as may be shown on recorded subdivision plats of the Development or be granted by separate recorded instrument:

(a) The Association, acting through the Board, shall have the right to grant easements for access and utilities over and through any portion of the Common Property in order to provide utilities, cable television, telecommunication, and other common services to Owners of any portion of the Development; and

(b) All Lots are subject to an access, drainage, and utility easement five (5) feet in width along and inside all property lines; provided, if a Dwelling Unit is built within five (5) feet of a side property line, then there shall be no access, drainage or utility easement along such property line to the extent that it would run through or under such Dwelling Unit.

Such easements shall include the right to cut drainage ways for surface water wherever and whenever such action may be necessary in order to maintain reasonable standards of health, safety and appearance, and to cut any trees, bushes, or shrubbery and to make any grading of the soil or take similar actions reasonably necessary to provide safe and effective utility installation and maintenance.

Section 4. Easement for Irrigation System.

The Association shall have an easement over all property in the Development for access to and installation, repair, maintenance, replacement, and operation of, an underground sprinkler and/or irrigation system. Any such system serving more than one Lot shall be controlled by the Association, but water bills will be paid by the Lot Owner on a regular basis, or as may be determined by the Association.

Section 5. Easements for Reconstruction.

In the event that any Dwelling Unit, or any combination of two (2) Dwelling Units, shall include a garden wall or similar wall which lies along or close to a common boundary line, the Lots on both sides of such common boundary line shall be subject to an easement for the reconstruction of such wall in the event it shall be damaged or destroyed, such easement to be limited to such time and such interference as shall reasonably be necessary to reconstruct the wall to the condition which existed prior to the destruction or damage.

Section 6. Easement for Party Wall; Maintenance and Repair.

The Owners of Lots improved with Dwelling Units which share a common wall (a "Party Wall") shall each have an easement over the other Lot for maintenance, repair, replacement and support of such Party Wall and shall share equally in the responsibility for and cost of maintenance, repair, and replacement of such Party Wall; provided, if damage or destruction to a Party Wall is caused by the acts or omissions of only one of the Lot Owners, or any person coming upon either Lot by permission of one of the Lot Owners, then that Lot Owner shall be entirely responsible for the cost of maintenance, repair, or reconstruction of the Party Wall. In the event it becomes necessary to rebuild a Party Wall, the responsible Owner(s) shall cause it to be rebuilt within six (6) months after the damage occurs, in the same location and of comparable size, materials, and quality as the previous Party Wall, except as otherwise specifically approved in writing by the ARC.

Section 7. Easement for Roof Overhang.

All Lots are subject to easements along any side Lot line to accommodate the overhang of roofs from any Dwelling Unit which may be built on the adjacent Lot. This easement shall permit the Owner of the Dwelling Unit with the overhanging roof to go upon the adjacent Lot to the extent required to perform normal and proper maintenance of such roof and overhang, including gutters, and to repair or replace the same as may be necessary.

Section 8. Right of Entry.

The Association shall have the right, but not the duty, to enter any Property in the event of an emergency or upon learning of any condition which may threaten the safety or property of any person, including the Owner himself and his property, in order to take appropriate steps to prevent or mitigate such harm or damage.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership in the Association.

Every Owner shall automatically become a Member of the Association upon taking title to a Property and shall remain a Member as long as the Owner continues to holds title to such Property. There shall be only one membership per Property. If title to a Property is held in the name of more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Article and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person 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 Secretary of the Association.

The Board of Directors of the Association may suspend the membership privileges of any Person during any period of time when such person is in default of any of his obligations under the Governing Documents, including, without limitation, the failure to pay assessments, as provided in Article XII, Section 3.

Section 2. Membership Classes.

There shall be only one (1) class of membership in the Association. Section 3. Voting Rights in the Association.

On any matter as to which the Owners or Members are entitled to vote under the Governing Documents:

- (a) the Owner of a Dwelling Unit shall be entitled to two (2) votes for such Dwelling Unit;
- (b) the Owner of an undeveloped Lot shall be entitled to one (1) vote for such undeveloped Lot; and
- (c) the Owner of a Development Unit Parcel shall be entitled to one (1) vote for each 1/5 acre of land within such Development Unit Parcel, rounded to the nearest 1/5 acre.

When voting for election of directors, the vote(s) for a particular Property shall be multiplied by the number of positions to be filled by such election and the resulting total number of votes for that Property may be cast for a single candidate or may be split among multiple candidates as the Owner(s) of such Property determine appropriate. On any matter other than election of directors, there shall be no splitting of votes for a particular Property.

If there is more than one Owner of a particular Property, the vote(s) for such Property shall be cast as such co-Owners determine among themselves, provided that if more than one co-Owner attempts to cast the vote(s) for such Property, the vote(s) for such Property shall be suspended.

Section 4. Board of Directors.

The affairs of the Association shall be governed by its Board of Directors, which shall have the authority to act on behalf of the Association in all matters except where the Governing Documents or South Carolina law specifically provide for a vote of the Members. The directors shall be elected by the Members in accordance with the By-Laws. The powers and duties of the Board of Directors shall be as described in the By-Laws.

**ARTICLE V
COVENANT FOR ASSESSMENTS**

Section 1. Covenant and Personal Obligation for Assessments.

By taking title to a Property, each Owner is deemed to covenant and agree to all the terms and provisions of this Declaration, including the obligation of each Owner to pay to the Association: (1) Regular Assessments as described in Section 3; (2) Special Assessments as described in Section 4; and (3) Specific Assessments as described in Section 5 for monetary fines and other charges authorized in the Governing Documents. Such amounts, together with late fees, interest, and costs of collection when delinquent as provided for herein (collectively, "Assessments"), shall be a charge against and continuing lien upon the Property against which they are assessed in favor of the Association and for the benefit of all Owners. Each Assessment shall also be the personal obligation of the Owner of the Property against which the Assessment is made.

No Owner may exempt himself from liability for Assessments by non-use of the Common Property, abandonment of his Property, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Section 2. Purpose of Assessments.

Any Assessments levied by the Association shall be used for the operation, improvement, maintenance, enhancement, management, or enlargement of the Development, administration of the Association's affairs, and otherwise fulfilling the duties and exercising the authority of the Association under the Governing Documents.

Section 3. Regular Assessments.

Regular Assessments are annual assessments due and payable on the first day of each fiscal year; however, unless the Board revokes the privilege of paying in installments, Regular Assessments may be paid in 12 equal monthly installments due on the first day of each calendar month. If an Owner is delinquent in paying any installment of the Regular Assessment, the

Board may revoke such Owner's privilege of paying in installments and declare the entire unpaid balance of the Regular Assessment due and payable immediately.

The Regular Assessment for each Property for the fiscal year which began January 1, 2005 is set forth on the schedule attached as Exhibit B to this Declaration. If the Board determines that an increase in the Regular Assessment for any subsequent fiscal year is appropriate in order to fund the anticipated expenses of the Association and contributions to reserve funds for such fiscal year as reflected in the budget adopted pursuant to Section 7 of this Article, the Regular Assessment may be increased as follows:

(a) The Board may, without a vote of the Members, increase the Regular Assessment from time to time; provided, however, the total increase for any 12-month period shall not exceed ten percent (10%) or the percentage increase in the Consumer Price Index during such period, whichever is greater. The "Consumer Price Index" or "CPI" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (South Region; Base: 1982-84 = 100). In the event the compilation and/or publication of the CPI is substantially revised, transferred to another governmental department, bureau, or agency, or discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations contemplated hereby, or in the event no such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternate index.

(b) If the Board proposes an increase in the Regular Assessment for any year which is greater than that permitted under subsection (a), such increase shall be subject to approval of by Members entitled to cast a majority of the total eligible votes in the Association.

(c) Any percentage increase in the Regular Assessment shall apply uniformly to all categories of Property, unless the Board determines that all or any portion of the increase is necessitated by an anticipated increase in expenses directly related to services provided by the Association to a specific category of Property, in which case the percentage increases for each category may vary to reflect a reasonable allocation of such additional expenses.

Section 4. Special Assessments.

In addition to the Regular Assessment described above, the Association may levy Special Assessments for the following purposes:

(a) Construction, reconstruction, repair or replacement of capital improvements upon the Common Property, including the necessary fixtures and personal property related thereto;

(b) Additions to the Common Property;

(c) To provide for facilities and equipment which the Board determines to be reasonably necessary for the Association to perform its responsibilities under the Governing Documents;

(d) To repay any loan made to the Association to enable it to perform the duties and functions authorized in the Governing Documents; and

(e) To fund other unanticipated and unbudgeted expenses of the Association.

Any Special Assessment shall be subject to approval by Owners entitled to cast a majority of the total eligible votes in the Association and shall be allocated to each type of Property in the same proportion as the Regular Assessments for the fiscal year in which such Special Assessment is approved. Any Special Assessment approved pursuant to this Section shall be due and payable as determined by the Board and, if the Board so elects, may be paid in installments extending beyond the year in which the Special Assessment is approved.

Section 5. Specific Assessments.

The Association may levy Specific Assessments against a particular Property as follows:

(a) for monetary fines assessed for violations of the Governing Documents after notice and a hearing pursuant to Article XII, Section 3;

(b) to cover loss, damage, or other costs which the Association incurs as a result of the negligence or reckless or willful conduct of any Owner or Occupant of the Property, their tenants, guests, or invitees, after notice and a hearing pursuant to Article XII, Section 3;

(c) to cover the costs which the Association incurs in bringing any Property into compliance with the Governing Documents upon the Owner's failure to do so after notice and a hearing pursuant to Article XII, Section 3;

(d) for any other charges which the Governing Documents authorize to be made against a particular Owner or a particular Property, including charges for maintenance and operation of any shared irrigation system pursuant to Article VI, Section 2(c).

Section 6. Date of Commencement of Assessments.

Any Property added to the Development after the date of recording of this Second Amended and Restated Declaration shall be subject to Assessments as of the date of recording of the amendment adding such Property to the Development. The Assessments against an unimproved Lot shall be prorated as of the date of issuance of a certificate of occupancy for a Dwelling Unit on such Lot, and thereafter the Property shall be subject to assessment as an improved Lot or Condominium Unit, as applicable.

Upon transfer of title to a particular Property, the new Owner becomes liable for payment of Assessments, including any delinquent Assessments owed on the Property, as of the date of such transfer; therefore, it is the responsibility of the new Owner to ensure that the transferring Owner has paid all Assessments due prior to taking title to the Property. However, nothing in this Declaration is intended to alter any contractual right the new Owner may have to reimbursement from the transferring Owner for such transferring Owner's share of such Assessments.

Section 7. Duties of the Board of Directors Concerning Assessments.

The Board of Directors shall prepare and make available to all Members at least fifteen (15) days prior to each annual meeting, a budget outlining anticipated receipts and expenses for the next fiscal year. The financial books of the Association shall be available for inspection by all Members at reasonable times.

The Board shall fix the amount of the Regular Assessment and any Special Assessment or Specific Assessment against each Property and shall direct the preparation of an index listing each Property and the Assessments applicable thereto which shall be open to inspection by the Members. The Board shall cause written notice of any Regular or Special Assessment to be sent to the Owner of each Property at least thirty (30) days prior to the due date thereof.

Section 8. Non-Payment of Assessments; Lien Rights and Other Association Remedies.

If any Assessment are part thereof is not paid within fifteen (15) days after the due date, then such Assessment shall be considered delinquent and shall be subject to a late fee in such amount as the Board may establish by resolution, as well as interest at the rate of 10% per annum or the maximum annual rate permitted by law, whichever is less, on the delinquent amount from the due date until paid. Such late fee and interest, together with costs of collection, including attorneys fees (whether or not suit is filed) and court costs, shall be added to the Assessment and the entire amount thereof shall automatically become a charge and continuing lien on the Property against which the delinquent Assessment was made. The Association may cause a notice of lien to be recorded in the Office of the Register of Deeds for Charleston County, South Carolina.

If any Assessment is not paid within thirty (30) days after the due date, the Association may declare the entire unpaid balance of all Assessments against the Property immediately due and payable and may bring an action at law against the Owner personally and to foreclose its lien according to the laws applicable to the foreclosure of mortgages and similar liens in the State of South Carolina. In the event of foreclosure, the Owner shall be required to pay a reasonable rental for the Property after commencement of the foreclosure action, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same.

Section 9. Subordination of the Lien to Mortgage.

The Association's lien for Assessments and other charges shall be subordinate to the lien of any first priority deed of trust, security deed, or mortgage on the Property made in good faith and for value; provided, however, such subordination shall apply only to the Assessments which are due and payable prior to a sale or transfer of such Property pursuant to foreclosure or other proceeding or deed in lieu of foreclosure. Any such sale or transfer shall not relieve the Property from liability for Assessments accruing after conveyance by the creditor to a subsequent Owner.

Section 10. Exempt Property.

- (a) No Assessments shall be made against the Common Property or any easement.

(b) Notwithstanding anything to the contrary in this Declaration, any mortgagee in possession of a Lot or Dwelling Unit whose mortgage was recorded prior to the effective date of this Second Amended and Restated Declaration, including any such mortgagees who acquired the property by foreclosure or by deed in lieu of foreclosure, shall be exempt from the payment of any monthly or annual Special Assessment so long as they remain in possession of the Lot or Dwelling Unit.

ARTICLE VI FUNCTIONS OF THE ASSOCIATION

Section 1. Ownership and Control of Common Property.

The Association shall be authorized to own, lease, control, and/or maintain (subject to the requirements of any federal, state or local governmental body) real and personal property, including equipment, furnishings, and improvements, for the common benefit, use and enjoyment of the Owners and for the performance of its duties under the Governing Documents, including without limitation:

- (a) entry monumentation and landscaping and community signage;
- (b) private roads, medians, open space, and landscaped areas;
- (c) sidewalks, walking paths or trails, and bicycle paths;
- (d) recreational and social facilities; and
- (e) gatehouses, equipment and facilities to assist in monitoring access to the Development; and other facilities and equipment which the Board deems reasonably necessary or appropriate to perform its responsibilities and exercise its authority under the Governing Documents.

Section 2. Services.

Subject to Section 3 of this Article, the Association shall (unless prohibited by the requirements of any federal, state or local governmental body) provide the following services in accordance with the Association's budget adopted pursuant to Article V:

- (a) Maintenance of all roads, roadways, roadway medians, parkways, and other Common Property in a neat and attractive condition, and in good order and repair;
- (b) Maintenance and operation of lighting installed along roads and on other Common Property;
- (c) Maintenance of landscaping on all Lots, including the entire area of unimproved Lots. The Association shall have no responsibility for maintenance of any special landscaping which the Owner installs on a Lot. Owners may choose to perform some of the landscaping of their own Lots, subject to such approval as may be required under Article VII; however, the

Owner shall not be entitled to any reduction in Assessments to account for landscaping or maintenance performed by the Owner. The Association shall have no responsibility for maintenance or operation of irrigation equipment on any Property, except that the Board shall have the authority to maintain, operate, and control any irrigation system that serves more than one Property and to assess all costs which the Association incurs, including utility costs, to the Owners of each Property served by the shared irrigation system as a Specific Assessment pursuant to Article V, Section 5 of this Declaration.

(d) Exterior "maintenance upon Dwelling Units as follows: power washing and painting of the painted exterior building surfaces and mailbox posts. The Association shall have no responsibility for maintenance, repair, or replacement of roofs, screens, interiors of porches, window washing, heating and air conditioning units, glass surfaces, decks, fencing, patios, gutters, if any, or siding, which shall be the responsibility of the Owner pursuant to Article II, Section 2, except if caused by agents of the Association;

(e) Repair and maintenance of fencing upon Lots, if and to the extent that the Association, acting through its Board, has assumed responsibility for such repair and maintenance in writing and has accepted an easement for such purpose upon determining that such fencing or other improvements constructed and placed upon a Lot benefits the Association and is not solely for the benefit of an individual Lot Owner;

(f) Exercise of architectural control pursuant to Article VII;

(g) Administration of the Association, including but not limited to, maintaining accurate books and records, conducting meetings as required in the By-Laws, and communicating with Members with regard to activities, meetings, elections, and other matters requiring a vote of the membership;

(h) Provision of liability and hazard insurance covering improvements and activities on the Common Property, and provision of liability insurance for members of the Board of Directors in the performance of their Board duties, as provided in Article VIII;

The Association may provide other services for the benefit of the Development and the Owners as the Board deems appropriate from time to time.

The Association may enter into contracts to provide any or all of the above listed services to other owners associations, and to provide other services to Owners for a fee, provided that the terms of any such contract are approved by the Board of Directors.

If the Association should determine that the need for maintenance or repairs by the Association provided for in this Section 2 is caused through an act of God or the willful or negligent act of an Owner, his lessee or their family, guests or invitees and not covered or paid for by insurance, the Association may assess the cost of such maintenance or repairs against the Owner and his Property as a Specific Assessment pursuant to Article V.

Section 3. Obligations of the Association.

Except as otherwise specifically required by this Declaration, the By-Laws, or separate agreement, with respect to those matters described in Section 2(e), (f), (g) and (h) above, the Board shall have the discretion to determine and modify from time to time the functions and services to be carried out or offered by the Association, and the level of service to be provided, taking into consideration the funds available to the Association, liability concerns, and other factors which the Board deems relevant.

Section 4. Mortgage and Pledge.

The Board shall have the power and authority to borrow money and/or mortgage the Common Property of the Association and to pledge the revenues of the Association for repayment of loans, which loans shall be used by the Association in performing its authorized functions, only with the approval of Members entitled to cast at least seventy-five percent (75%) of the total eligible votes in the Association. Notwithstanding anything in this Declaration to the contrary, the Association shall not reduce the rate of Regular Assessment at any time that there is an outstanding balance on any loan which the Association is obligated to repay.

Section 5. Professional Management.

(a) The Association, acting through the Board, shall retain or employ professional management to assist the Board in managing the Development and performing the Association's responsibilities under the Governing Documents unless a decision to change from professional management to self-management is approved by the Board and by Owners entitled to cast at least eighty percent (80%) of the total votes in the Association. The Board may select, retain, terminate, and replace professional management companies as it deems appropriate in the exercise of its business judgment. Any approval required under this section may be obtained by affirmative vote, written consent, or any combination thereof.

(b) Any professional management agent retained by the Association to manage the Development must: (a) be in the business of managing community association developments; (b) be at all times properly staffed to carry out the duties and functions of the Association; (c) have sufficient capital to meet its obligations on an ongoing basis; and (d) have a South Carolina Real Estate Broker In Charge License or Property Manager In Charge License.

(c) Any agreement for professional management of the Development shall be for a term not to exceed one year and shall provide for termination by the Association, with or without cause and without payment of a termination fee, penalty or liquidated damages, upon not more than forty-five (45) days notice.

Section 6. Books and Records.

The Association shall maintain books and records as required by the South Carolina Nonprofit Corporation Act, §33-31-1601, which it shall make available for inspection as provided in Article XI.

Section 7. Safety and Security.

Each Owner and Occupant, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities designed to promote or enhance the level of safety or security which each Person provides for himself or herself and his or her property. However, the Association, its officers, directors, and manager shall not in any way be considered insurers or guarantors of safety Or security within the Development, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any monitoring system, gatehouse, or any mechanism or system for limiting access to the Development, cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Occupants of such Owner's Property, that the Association, its officers, directors, and manager, are not insurers or guarantors of security or safety and that each Person within the Development assumes all risks of personal injury and loss or damage to property, including Dwelling Units and their contents, resulting from acts of third parties.

**ARTICLE VII
ARCHITECTURAL CONTROL**

Section 1. Composition of the Architectural Control Committee.

The Board of Directors shall appoint an Architectural Control Committee ("ARC") composed of at least five (5) but not more than eleven (11) Members, all of whom shall reside in the Development. The members of the ARC shall be appointed for a term of one (1) year and may, in the Board's discretion, be appointed to consecutive terms. The Board shall have the power to remove any member of the ARC and fill any vacancy on the ARC resulting from the resignation, removal, death or incapacitation of any member of the ARC. In the event that the ARC ceases to perform its functions under this Article, the Board may appoint a new ARC or dissolve the ARC and assume its functions.

Section 2. Architectural Review and Approval.

No building, wall, fence, swimming pool, or other structure, other than a Permitted Antenna as defined in Section 7 of this Article, shall be commenced, erected, or maintained upon any Lot, nor shall landscaping be installed or removed, nor shall any exterior addition to any existing structure or exterior change or alteration thereof be made, until:

(a) plans and specifications for the proposed work, showing the nature, kind, shape, height, materials, colors, finishes, and location of the same, have been submitted to and approved in writing by the ARC; and

(b) copies of the all necessary governmental permits have been provided to the ARC.

In reviewing each application, the ARC may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures, topography, and environment. Decisions may be based on purely aesthetic considerations.

The ARC must respond in writing to applicants for architectural approval within forty-five (45) days after receipt of all required information. The ARC may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application in its entirety. Failure of the ARC to respond in writing with such 45-day period shall constitute approval of such application. A copy of the notice shall be maintained in the records of the ARC proceedings, which shall be available for inspection by any Member upon request.

Section 3. Appeals.

An applicant for architectural approval or any other Owner aggrieved by a decision of the ARC may appeal the decision of the ARC to the Board of Directors by submitting a written appeal to the Board within twenty (20) days after the date of the ARC's written notice to the applicant of its decision. Failure to file an appeal within the time specified herein shall constitute a waiver of the right to appeal to the Board.

Section 4. Guidelines.

In considering each application, the ARC shall be guided by the following criteria, although these guidelines shall not be the exclusive criteria governing the ARC's determinations:

(a) No dwelling, garage or other approved building or portion of a building shall be located on any Lot nearer to any Lot line than the building line limits shown on the plat or required under any applicable subdivision or zoning regulations then in effect. For purposes of this restriction, eaves, steps, patio garden walls and unenclosed porches shall not be considered as a part of any building.

(b) All buildings shall be constructed with high quality materials and workmanship. The ARC may, but shall not be obligated to, establish standards and specifications for materials and workmanship to be used on the exterior of Dwelling Units.

(c) Structures should be located on each Property in such a way as to maximize the desirability of the view available not only to the home to be placed on that Property but also with due regard to the view from surrounding Dwelling Units, taking into consideration the elevation contours of each Property, the location of large trees, and similar considerations.

(d) All fuel tanks and containers shall be installed above ground and must be screened with shrubbery or lattice at the time of installation. Installation shall be consistent with normal safety precautions and all applicable governmental regulations.

(e) Mailboxes shall be of uniform design as specified or approved by the ARC. Newspaper boxes must be attached to the mailbox post and shall not be installed as a separate mailbox.

Section 5. Completion of Work.

If construction does not commence on any project for which approval has been given within six months after the date of such approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing such work. Once construction has commenced, it shall be diligently pursued to completion. All work, including any related landscaping provided for in the approved plans, shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the ARC grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association or any aggrieved Owner.

Section 6. No Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Development, as determined by the ARC and/or the Board; they do not create any duty to any Person. The ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Dwelling Units are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to Owners of neighboring Property.

Neither the Association, the Board, the ARC, or any member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Property. In all such matters, the Association shall indemnify and defend the Board, the ARC, and the members of each as provided in the By-Laws.

Section 7. Permitted Antennaes.

Satellite dishes that are one (1) meter or less in diameter or diagonal measurement, and antennaes designed to receive television broadcast signals (collectively, "Permitted Antennaes"), may be installed without prior approval of the ARC provided that they are integrated with the home and surrounding landscape and are not conspicuous from the street. The following locations for installation are stated in order of preference:

(a) Attic, crawl space, garage, or other interior spaces of the Dwelling Unit so as not to be visible from outside the Dwelling Unit or other structure;

(b) Attached to or mounted on a deck or patio in the rear yard of the Dwelling Unit and extending no higher than the eaves of that portion of the roof of the Dwelling Unit directly in front of such satellite dish; or

(c) Attached/mounted on the rear roof of the Dwelling Unit so as to extend no higher than the ridgeline of the Dwelling Unit at a point directly above the position where attached.

Should an Owner determine that a satellite dish cannot be located in compliance with the above guidelines without (i) precluding reception of an acceptable quality signal, or (ii) unreasonably increasing the cost of installation, maintenance, or use of the satellite dish, then the Owner may apply to the ARC for approval of an alternative location or method of installation. Such alternative location shall be the least conspicuous location in which an acceptable quality signal can be received.

ARTICLE VIII INSURANCE AND CASUALTY LOSS

Section 1. Requirement to Have Insurance.

(a) Coverage's. The Board of Directors or its duly authorized agent shall have the authority to and shall obtain the following insurance coverage:

(i) blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Property. In addition, the Association may, by written agreement with any other owners association in the Development, assume the insurance responsibility for the property held by or the responsibility of such other association. Insurance coverage on the Common Property shall be in a face amount sufficient to cover the full replacement cost of the insured improvements under current building codes and ordinances in the event of damage or destruction from any insured hazards, but may provide for a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy satisfies the requirements of this Section;

(ii) commercial general liability insurance insuring the Common Property, the Association, and its Members for all damage or injury caused by the negligence of the Association, its employees, agents, and contractors while acting on the Association's behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least One Million Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, and may contain a reasonable deductible;

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

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the total annual Regular Assessments levied by the Association for that year plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

(b) Premiums. Premiums for all insurance on the Common Property shall be a common expense for the Association included in the Regular Assessment, as defined in Article V. Premiums for insurance provided to other associations shall be charged to such associations. All such insurance coverage obtained by the Board shall be written in the name of the Association for the benefit of itself and as trustee for the respective benefited parties, including Members, guests, invitees, and other covered associations.

(c) Provisions Governing Insurance. All insurance obtained by the Association shall be governed by the following provisions:

(i) All policies shall be written with a company licensed to do business in South Carolina and holding an "A" rating or better as established by the A.M. Best Company, Inc., if available, and if not available, the most nearly equivalent rating.

(ii) All policies for the Common Property shall be for the benefit of the Owners and their mortgagees, as their interest may appear.

(iii) Exclusive authority to adjust losses under the policies in force on the Property obtained by the Association shall be vested in the Board of Directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(iv) In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with the insurance obtained by individual Owners, Occupants or their mortgagees.

(v) The Board of Directors shall conduct at least every two (2) years an insurance review which includes a replacement cost appraisal, without respect to depreciation, of all the insurable improvements on the Common Property by one or more qualified persons, at least one of whom must be a real estate appraiser licensed in South Carolina.

(vi) The Board of Directors shall make every reasonable effort to secure insurance policies that will provide the following:

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

(B) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(C) That no policy may be canceled, invalidated, or suspended on account of any acts or omissions by one or more individual Owners;

(D) That no policy may be canceled, invalidated or suspended on account of 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 defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee; and

(E) That any "other insurance" clause in any policy excludes individual Owners' policies from consideration.

Section 2. Disbursement of Proceeds.

Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or any portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs for repairs or reconstruction to the Common Property, after making such settlement as is necessary and appropriate with the affected Owner or Owners if a Dwelling Unit is involved and with their mortgagee(s), as their interest may appear, shall be retained by and for the benefit of the Association and placed in a capital account. This is a covenant for the benefit of any mortgagee of any Dwelling Unit and may be enforced by such mortgagee.

(b) If it is determined, as provided for in this Section 2, that the damage or destruction of the Common Property for which the proceeds are paid shall not be repaired or reconstructed, such proceeds may be retained by the Association and placed in a capital account or may be disbursed to the affected Owners in proportion to their interests in such Common Property.

Section 3. Repair and Reconstruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Development covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction as used

in this paragraph means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Property shall be repaired or reconstructed unless Owners entitled to cast at least seventy-five percent (75%) of the total votes in the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimate of the cost of repair or reconstruction, or both; are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, that any such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Property damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the property shall be restored to its natural state and maintained as an undeveloped portion of the Common Property by the Association in a neat and attractive condition.

(d) If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, then notwithstanding anything to the contrary in this Declaration, the Board of Directors may, without the necessity of a vote of the Members, levy a Special Assessment against all Owners in the same ratio as Regular Assessments are levied. Additional Special Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE IX PARTITION; CONDEMNATION

Section 1. No Partition.

Except as expressly permitted in this Declaration, there shall be no physical partition of the Common Property or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition, unless the property has been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real estate that may or may not be subject to this Declaration.

Section 2. Condemnation.

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise

prohibited by law. The award for such taking shall be payable to the Association as trustee for all Owners to be distributed as follows:

(a) If the taking involves a portion of the Common Property on which community facilities or other improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five percent (75%) of the Members in the Association shall agree otherwise, the proceeds from the taking shall be used to defray construction of replacement or substitute facilities or improvements on other portions of the Common Property to the extent land is available therefore in accordance with plans approved by the Board of Directors.

(b) If the taking does not involve community facilities or other improvements on the Common Property or if the Members of the Association have voted in accordance with subsection (a) above not to reconstruct such facilities or improvements, then the condemnation proceeds shall be an asset of the Association to be used as the Board determines.

ARTICLE X MORTGAGEE PROVISIONS

Section 1. Right to Notice.

Upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the address of the Property in which it has an interest, any mortgage holder, insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the Property securing its mortgage;

(b) Any 60-day delinquency in the payments of assessments, fines or charges owed by the Owner of the Property securing its interest;

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

(d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

Section 2. Payment of Taxes.

First mortgagees of Dwelling Units may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Property. First mortgagees making such payments shall be allowed immediate reimbursement therefor from the Association or add such mortgage amounts to the balance due on said mortgage's option.

Section 3. No Priority.

No provisions of the Governing Documents give or shall be construed as giving any Owner, or any other party, priority over any rights of the first mortgagee of a Dwelling Unit pursuant to its mortgage in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Property.

Section 4. Assessments.

Notwithstanding anything to the contrary contained in this document, any mortgagee in possession, including those mortgagees in possession that have acquired the Property by foreclosure or by deed in lieu of foreclosure, shall be exempt from assessment in accordance with Article V, Section 10; however, any Occupant of such Property shall not have use of the clubhouse or recreational amenities within the Common Property.

**ARTICLE XI
INSPECTION OF BOOKS AND RECORDS**

Section 1. Right to Inspect.

(a) The Association shall make current copies of the Governing Documents and its books and records available, upon at least five (5) business days' prior written request, for inspection and copying by any Member, any holder, insurer or guarantor of a first mortgage on any Dwelling Unit, or the duly appointed representative of any of the foregoing, as required by the South Carolina Nonprofit Corporation Act. The Board shall provide for such inspection to take place during business hours at the Association's office or at such other place within the Charleston, South Carolina metropolitan area as the Board shall designate. The Association may charge a reasonable fee to cover its estimated costs of production or reproduction of the records.

(b) A request to inspect the Association's accounting records and membership list shall be granted only if made in good faith and for a proper purpose, and shall be limited to those records directly connected to such proper purpose. The written request to inspect shall state with reasonable particularity the purpose of the inspection and the records which the requesting party desires to inspect.

Section 2. No Disclosure.

No information obtained in the course of such an inspection shall be disclosed to any Person who would not personally be entitled to conduct such an inspection under the terms of this Section, other than a court of law or upon court order, without the prior written permission of the Board of Directors.

**ARTICLE XII
GENERAL PROVISIONS**

Section 1. Amendments.

Except as otherwise specifically provided in this Declaration, this Declaration may only be amended with the approval of Owners entitled to cast at least two-thirds (2/3) of the total eligible votes in the Association, which approval may be obtained at a meeting of the Members or by written consent, or by any combination of votes and written consents. No amendment shall be effective until executed by at least two officers of the Association certifying that it has received the requisite approval and recorded in the Office of the Register of Deeds for Charleston County, South Carolina.

Section 2. Duration of Restrictions.

This Declaration, as it may be amended pursuant to Section 1 of this Article, shall run with the land and shall be binding upon all parties owning any portion of the Development, their heirs, administrators, executors, successors and assigns, and all parties claiming against them and through them, for a period of thirty (30) years from the date the Original Declaration was recorded in the Office of the Register of Deeds for Charleston County, after which it shall be automatically extended for successive periods of ten (10) years each unless an instrument terminating this Declaration is signed by a majority of the then Owners and their mortgagees, if any, and recorded in the Office of the Register of Deeds for Charleston County.

Section 3. Enforcement.

(a) **General.** In the event of a violation of, or attempt to violate or circumvent, any provision of the Governing Documents, the Association and any aggrieved Owner, or any of them jointly or separately, shall have the right to proceed at law or in equity to compel compliance, restrain violations, or to recover damages, if applicable. In addition, the Board may impose sanctions in accordance with subsections (b) and (c) of this Section. The failure to enforce any right, reservation, obligation, restriction, or condition contained herein, for any period of time, shall not be deemed a waiver of the right to do so thereafter.

(b) **Sanctions Requiring Prior Notice and Hearing.** After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may, without liability to any Person:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Property. In the event that any Occupant, guest, or invitee of a Property violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any Regular or Special Assessment);

(iii) suspend any Person's right to use any recreational facilities, including the clubhouse, within the Common Property (A) for any period during which any charge against such Owner's Property remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); however, nothing herein shall authorize the Board to limit ingress or egress to or from a Property;

(iv) suspend services the Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) levy Specific Assessments pursuant to Article V, Section 5; and

(vii) record a notice of violation with respect to any Property on which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within 12 months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

(c) **Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing and without liability to any Person:

(i) exercise self-help or take action to abate a violation in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Property under any circumstances;

(iii) require an Owner, at the Owner's expense, to perform maintenance or to remove any structure or improvement on such Owner's Property that is in violation of the requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the Property and exercise self-help to remove or cure a violating condition if an Owner fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both;

(d) **Board Decision to Pursue Enforcement Action.** The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

(e) **Attorneys Fees and Costs.** In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs reasonably incurred in such action.

Section 4. Interpretation.

The Board of Directors shall have the right to resolve all ambiguities and inconsistencies, if any, arising in connection with the interpretation of this Declaration, consistent with any applicable laws and regulations.

Section 5. Severability.

Should any provision of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Notices.

Any notice required to be sent to any Person under the terms of this Declaration shall be deemed to have been properly sent, and notice thereby given, if sent or delivered in any manner authorized pursuant to the By-Laws.

Section 7. Miscellaneous.

(a) Nothing in this Declaration shall cause the Owners to be deemed a partnership, an association, or other legal entity, other than as specifically set forth herein. The relationship among Owners is strictly a covenant relationship governed by the terms of this Declaration and by applicable law.

(b) This instrument shall be interpreted and enforced according to the laws of the State of South Carolina.-

[continued on next page]

EXHIBIT "A"

SUBMITTED PROPERTY

All that certain tract or parcel of land located in Charleston County, South Carolina and designated as "Tract B" on a subdivision plat entitled "PLAT OF SUBDIVISION OF A 177.25 ACRE TRACT OF LAND INTO TRACTS A & B" prepared by Gifford, Nelson and Riesberg, dated May 1, 1986, and recorded in Plat Book B-H at Page 145, in the Office of the Register of Deeds for Charleston County, South Carolina.

EXHIBIT "B"

REGULAR ASSESSMENT FOR YEAR BEGINNING JANUARY 1,2005

Developed Lot with a Dwelling Unit month/\$2,160.00 per year	\$ 180.00	per
Condominium Dwelling Unit (Deer Ridge) month/ \$ 1,020 per year	\$85.00	per
Undeveloped Lot without improvements	\$25.00	per year
Development Unit Parcel	\$0	per year

EXHIBIT "C"

DEVELOPMENT AND SALE RIGHTS

The Builder shall have the rights set forth in this Exhibit C for so long as Builder owns any Property in the Development primarily for the purpose of development and sale.

1. **Plan of Development.** The Builder may modify the Master Plan, subject to such local governmental approvals as may be required, to provide for or change the proposed development of any Development Unit Parcel, which modification shall be accomplished by the preparation and recording of a subdivision plat reflecting the final location and size of Lots, Dwelling Units and Common Property, including roads, within the Development Unit Parcel, and the Master Plan shall be deemed amended as necessary to be consistent with such recorded plat. Notwithstanding this, no change to the Master Plan shall be effective to permit a land use other than residential use, supporting subdivision improvements, and Common Property without the prior written consent of the Members holding at least sixty percent (60%) of the votes cast at a meeting at which a quorum is present. Any change to the Master Plan shall be consistent with this Declaration and applicable zoning.

It is anticipated that many of the Dwelling Units to be built on the Lots referred above will be built along one or both side property lines of such Lots. In the event the actual construction of any Dwelling Unit extends beyond any property line, the Builder shall have the right, subject to any necessary governmental approvals, to amend or revise the subdivision plat of the affected Lots to make appropriate adjustments in the property lines of any affected Lot that Builder owns.

Notwithstanding any provision herein to the contrary, Builder reserves the right to designate all or any portion of any Development Unit Parcel as an area for detached or attached single family or condominium development; provided no attached single family development or patio home project shall exceed two Dwelling Units per building, and any condominium development must be an expansion of and contiguous to the Deer Ridge Condominium. Such portion shall be subject to appropriate restrictions similar in purpose and nature to those set forth in the Declaration for single family Lots, which restrictions shall be set forth in a master deed, by-laws, declaration of horizontal property regime, or other instrument filed of record in the Office of the Register of Deeds for Charleston County, South Carolina to establish such condominium project.

2. **Subdivision of Property.**

The Builder shall have the right to subdivide any Development Unit Parcel into Lots, Condominium Units, and/or Common Property, by recording one or more subdivision plats in the Office of the Register of Deeds for Charleston County, South Carolina.

2. **Construction Activities.**

(a) Notwithstanding any prohibition in this Declaration on mobile homes, modular or manufactured homes, house trailers, outbuildings, or other temporary structures, the Builder may utilize such structures for temporary space during construction of any Dwelling Unit.

(b) Construction and building activities by the Builder within any portion of the Development shall be carried out in accordance with such rules and regulations as mutually agreed to between the Builder and the Association.

3. Sales Activities.

Subject to the City of North Charleston Ordinance § 5-1(b)6, Model Homes and Sales Centers, Builder and its representatives, agents and assigns may maintain a model home or sales office within any Dwelling Unit it owns for purpose of promoting the sale of its Dwelling Units and may post a sign on such Dwelling Unit identifying the sales office.

4. Easements.

(a) There is hereby created an easement for Builder, the Association, and for the benefit of any public authorities and utility companies to which Builder may choose to grant such easements over and through all areas designated as roads or streets within the Development; and on such additional portions of the Development as may be necessary in order to provide water, sewerage, power, gas, television cable, and other utility and common services to Owners of any portion of the Development.

(b) Builder shall have the right to grant, and reserve unto itself and its agents and representatives, such additional easements for such purposes as it deems advisable in its sole discretion, including, but not limited to, those for drainage and/or construction of storm drainage, surface water drainage, and retaining walls; said easements to be shown by recording supplemental plats. The easements reserved to the Builder above, and the easements which Builder shall have the right to grant to appropriate public authorities and utilities, shall include the right to go upon, over, across, and under any area of the Development for ingress, egress, and access for construction, sale and resale activities, erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water, gas lines, and other suitable equipment for the conveyance, movement, and use of electricity, telephone equipment, television cable, gas, water, sewer, and other public conveniences and utilities. Such easements shall include the right to cut any trees, bushes or shrubbery and to make any grading of the soil or take similar actions reasonably necessary to provide safe and effective utility installation and maintenance. Such easements shall also allow Builder or any appropriate utility or authority to cut drainways for surface water wherever and whenever such action may be necessary in order to maintain reasonable standards of health, safety and appearance.

(c) Builder shall have the right to subject the real property in the Development to a contract with a utility company for the installation of underground electric cables and/or for the installation of street lights, which will require a monthly payment to such utility by the Association or the individual Lot or Dwelling Unit Owner. Builder shall have the right, but not the obligation, to transfer or grant to the Association all or any of the easements reserved to the Builder hereunder.

5. **Assignment.** The Builder shall have the right to assign all or any portion of its rights and responsibilities hereunder to any party or parties it may choose by preparing and recording in the Office of the Register of Deeds a written assignment executed by Builder and the party to whom such rights and responsibilities are being assigned. No such assignment shall relieve Builder of responsibility for any obligations arising prior to such assignment, unless assumed in writing by the assignee.

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**AMENDED AND RESTATED BY-LAWS
OF
THE ELMS HOMEOWNERS ASSOCIATION**

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**AMENDED AND RESTATED BY-LAWS
OF
THE ELMS HOMEOWNERS ASSOCIATION**

**ARTICLE I
NAME AND LOCATION**

The name of the Corporation is THE ELMS HOMEOWNERS' ASSOCIATION, INC., (the "**Association**"). The principal office of the Association shall be the clubhouse for The Elms of Charleston, located at 9100 Elms Plantation Boulevard, North Charleston, Charleston County, South Carolina 29406 ("Clubhouse"). The primary meeting location for the general meetings of the Membership will be the Clubhouse, but meetings of Members or Board of Directors may be held at such other places within the State of South Carolina as the Board may designate.

**ARTICLE II
DEFINITIONS**

The terms used in these By-Laws shall be given their normal, commonly understood meanings, except that capitalized terms shall be defined as described in the Second Amended and Restated Declaration of Covenants, Restrictions and Easements for The Elms of Charleston, as amended, recorded in the Office of the Register of Deeds for Charleston County, South Carolina (the "Declaration"), unless the context indicates otherwise.

**ARTICLE III
MEMBERSHIP IN THE ASSOCIATION**

Section 1. Classes of Membership.

The Association shall have one class of membership, as set forth in Article IV of the Declaration, the terms of which are incorporated by this reference.

Section 2. Membership and Voting Rights.

The Members shall have such rights and privileges, including such voting rights, as are set forth in the Declaration, these By-Laws, the Articles, and the South Carolina Nonprofit Corporation Act. Such rights and privileges shall be subject to suspension by the Board for violations of the Governing Documents and failure to pay Assessments, as described in Article XII, Section 3 of the Declaration, except that the Board shall not be authorized to limit ingress or egress to or from any Property.

**ARTICLE IV
BOARD OF DIRECTORS**

Section 1. Board of Directors; Terms of Office.

The affairs of the Association shall be managed by a Board of five (5) Directors. At the 2004 annual meeting of the Members, five (5) directors were elected by the Members to take office on January 1, 2005, with one (1) director elected for a term of three (3) years, two (2) directors elected for a term of two (2) years, and two (2) directors elected for a term of (1) year. At each annual meeting thereafter, directors shall be elected for a term of three (3) years to succeed the director(s) whose terms are expiring on January 1 next following such annual meeting. Directors may be elected for any number of consecutive terms.

Section 2. Nomination and Election of Directors.

(a) **Nominations.** Nominations for election to the Board of Directors shall be made by the Nominations and Elections Committee appointed by the Board as described in Article VI, Section 3 of these By-Laws. Members shall have until forty-five (45) days prior to the annual meeting to submit names of potential candidates to the Nominations and Elections Committee for its consideration. At least thirty (30) days prior to each annual meeting, such Committee shall present its nominations to fill the positions of those directors whose terms on the Board are expiring and the Secretary shall post the Committee's slate of nominees (with brief biographies) in the Clubhouse. Thereafter, additional nominations for the Board of Directors may be made in writing to the Secretary until twenty (20) days prior to the annual meeting. The Committee shall use reasonable efforts to contact each nominee to determine his or her willingness to serve prior to preparation and distribution of the ballots. All nominees who indicate their willingness to serve shall be listed on the ballot. No person shall be nominated for election to the Board by the Members except in accordance with this Section.

The Secretary shall deliver to each Member a copy of the slate of candidates nominated by the Committee and all additional candidates nominated in writing to the Secretary, together with their biographies and a ballot and/or proxy, at least fifteen (15) days prior to the annual meeting.

(b) **Election.** At the annual meeting, the election shall be conducted by written ballot. The votes allocated to each Property pursuant to Article IV, Section 3 of the Declaration shall be multiplied by the number of positions to be filled at such election and the Owner(s) of such Property, or their proxies, may cast the resulting total for a single candidate, or may split the votes among multiple candidates as the Owner(s) see fit. All proxies must be filed with the Secretary prior to the meeting being called to order. The Secretary shall conduct the election and tabulate the votes, the results of which shall be verified and certified by a special audit committee appointed pursuant to Article VI, Section 4. The candidates receiving the largest number of votes shall be elected.

Section 3. Vacancies in the Board of Directors.

In the event of the death, disability, or resignation of a director, the Board may, by majority vote of the remaining directors, declare a vacancy and appoint a successor to fill the vacancy for the unexpired portion of the term.

Section 4. Removal of Directors.

(a) **By Members.** Any director may be removed, either with or without cause,, by a vote of Members entitled to cast at least sixty-five percent (65%) of the total eligible votes in the Association at any special meeting called for that purpose, or at the annual meeting. A successor may be elected by the Members at such meeting, by a plurality of the eligible votes cast, to fill the vacancy for the unexpired portion of the term.

(b) **By Board.** The Board may remove any director from office if the director is absent from three (3) consecutive regular meetings of the Board without being excused. The Board may, by majority vote of the remaining directors, appoint a successor to serve the unexpired portion of the term.

(c) **Notice to Director.** Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Notice of any meeting at which removal of a director shall be considered must state that the purpose, or one of the purposes, of the meeting is to consider the removal of the director.

Section 5. Powers.

The Board of Directors shall have the power to exercise, on behalf of the Association, all powers and authority vested in or delegated to the Association by the Governing Documents, any contract or agreement, or by South Carolina law, including, without limitation, the power:

(a) to appoint and remove all officers, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deemed appropriate. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Member, officer or director of the Association in any capacity whatsoever;

(b) to establish, levy and assess, and collect the Assessments and other charges, as provided in the Declaration;

(c) to adopt and publish rules and regulations governing the use of property in the Development and the personal conduct of the Members and their guests and invitees in the Development;

(d) to appoint an Executive Committee of three (3) directors and delegate all or any specific portion of the powers of the Board to this Executive Committee;

(e) to enter into a contract for professional management of the Association; and

(f) to exercise all other such powers as are necessary for the maintenance, management, and operation of the Association, the implementation and enforcement of the Governing Documents, and compliance with applicable laws and ordinances.

Section 6. Duties.

The duties of the Board of Directors shall include, without limitation, the duty:

(a) to cause to be kept a complete record of all its acts and corporate affairs and to do all things necessary for the maintenance of its corporate existence;

(b) to prepare and adopt an annual budget in accordance with the Declaration;

(c) to levy and collect Assessments from the Owners in accordance with the Declaration;

(d) to prepare a roster listing each Property and the Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Member;

(e) to provide for the operation, care, maintenance, repair, and replacement of the Common Property;

(f) to retain professional management unless otherwise approved by the Members as provided in the Declaration, and to designate, retain, and dismiss, as the Board deems appropriate, personnel necessary to carry out the Association's responsibilities, to provide for the compensation of such personnel, and to provide for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(g) to supervise all officers, agents, and employees of the Association and to see that their duties are properly performed;

(h) to open and maintain one (1) or more bank accounts in the Association's name and designate the authorized signatories for each;

(i) to deposit all funds received on the Association's behalf in a bank depository which the Board has approved and to designate the use of such funds in a manner consistent with the Governing Documents; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(j) to determine when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and to bring any proceeding which the Board deems appropriate on behalf of the Association, subject to the provisions of Article XII, Section 3 of the Declaration, as applicable;

(k) to obtain and carry property and liability insurance and fidelity bonds, as provided in the Declaration, to pay the cost thereof, and to file and adjust claims, as the Board deems appropriate;

- (l) to pay the cost of all services rendered to the Association;
- (m) to keep a detailed accounting of the Association's receipts and expenditures;
- (n) to make the copies of the Governing Documents and the Association's books and records available for inspection as required by Article XI of the Declaration;
- (o) to indemnify a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by South Carolina law, the Articles, or these By-Laws; and
- (p) to issue within ten (10) days after receipt of a written request from any Owner or mortgage lender, a certificate setting forth whether any Assessment against a particular Property remains unpaid, which certificate shall be binding on the Association.

Section 7. Conflicts of Interest.

A transaction between the Association and an officer or director of the Association, a family member of an officer or director, or an entity with which an officer or director is affiliated shall not be voidable or impose liability on the officer or director if the transaction was fair to the Association at the time it was entered into or if:

- (a) the material facts of the transaction and the director's or officer's interest were disclosed or known to the Board or the membership prior to the Board or membership authorizing, approving, or ratifying the transaction; and
- (b) the transaction is approved either by a majority of the directors (but at least two) who have no direct or indirect interest in the transaction, or by Members entitled to cast a majority of the total eligible votes in the Association. A majority of the total votes in the Association eligible to be counted shall constitute a quorum for any such action the Members.

The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under this Section 7, but such director's vote may not be counted in a vote to determine whether to authorize, approve, or ratify a conflict of interest transaction. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Section 8. Limitations on Certain Actions.

- (a) **Unbudgeted Expenditures.** Except in an emergency situation, any unbudgeted expenditure that exceeds five percent (5%) of the annual operating budget shall require the approval of Members entitled to cast a majority of the votes cast in person or by proxy at a duly called meeting of the membership.
- (b) **Mergers and Consolidations.** Subject to the provisions of the Declaration, the Association may merge or consolidate with other nonprofit corporations or associations

organized for similar purposes with the assent of Members entitled to cast at least seventy-five percent (75%) of the total eligible votes in the Association.

ARTICLE V OFFICERS

Section 1. Officers Required.

The officers of the Association shall include a President, a Vice-President, a Secretary, and a Treasurer. The President shall be a director; all other officers may, but shall not be required to, be directors.

Section 2. Election of Officers.

The officers shall be resident Owners and shall be elected by a majority of the Board. All officers shall hold office until their successors have been duly elected and qualified, or until removed as hereinafter provided.

Section 3. Removal of Officers.

Any officer may be removed either with or without cause by the vote of a majority of the Board of Directors.

Section 4. Authority and Duties of the President.

The President shall have the authority to sign all notes, checks, leases, mortgages, deeds, and all other written instruments covered by the approved budget and/or authorization by the Board. The President may delegate this authority to any officer. Any delegation of this authority shall be in writing and signed by the President.

Section 5. Authority and Duties of the Vice President.

The Vice President shall perform all the duties of the President in the absence of the President and any other duties assigned by the President.

Section 6. Authority and Duties of the Secretary.

The Secretary shall record the votes and keep the minutes of all proceedings of the Board and the Members in a book to be kept for that purpose. The Secretary shall keep the records of the Association. He or she shall record in a book kept for that purpose the names of all Members of the Association, together with their addresses as registered by such Members.

Section 7. Authority and Duties of the Treasurer.

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; provided, a resolution of the Board shall not be necessary for disbursements made in the ordinary course of business. The Treasurer shall have the authority to sign all notes, checks, leases, mortgages, and

deeds authorized by the annual budget, and all other written instruments which the Board may authorize. The Treasurer may delegate this or any specific portion of this authority to any professional management company engaged by the Association, subject to such limitations as may be established by the Board and any management agreement. Any delegation of this authority shall be in writing and shall be signed by both the President and the Treasurer.

Section 8. Limitation on Terms of Office.

Officers may not be elected to the same office for more than two consecutive terms.

**ARTICLE VI
COMMITTEES**

Section 1. Appointment of Committee Chairs.

As soon as practicable after each annual meeting of the Association, the President shall, subject to the Board's approval, appoint the chairperson of the standing committees described below. The President may also appoint the chairperson for any special committees established pursuant to Section 6 below. Except as otherwise specified in Section 5(a) with respect to the chair of the Finance/Budget Committee, all such chairpersons shall hold office at the discretion of the Board and shall be invited to attend and participate in Board meetings but shall not be entitled to vote at Board meetings.

Section 2. Committee Members.

Except as otherwise specified in Sections 3 and 4 of this Article, committee chairs shall select the members of their committees from among the Owners. Requests to serve on a particular committee may be submitted to the chair in writing. The chair may, but shall not be obligated to, honor such requests.

Section 3. Nominations and Elections Committee.

The President shall appoint a Nominations and Elections Committee consisting of five (5) Members, one (1) of whom shall be a board member and four (4) of whom shall not be board members or officers of the Association. The chairman shall be appointed by the President. The Nominations and Elections Committee shall be responsible for nominating candidates for election to the Board by the Members, as provided in Article IV, Section 2.

Section 4. Special Audit Committee.

Prior to each annual meeting of the Members, the President shall appoint a special audit committee, consisting of three (3) Members who are not directors, to verify and certify the tabulations of votes cast for election of directors and other matter voted on at such meeting.

Section 5. Standing Committees.

(a) **Finance/Budget Committee.**

(1) The Treasurer shall be chairman of the Finance/Budget Committee. The Finance Committee shall assign budgeted funds for expenditure to various committees and/or operating components reporting to the Board.

(2) The Finance/Budget Committee shall establish procedures for measuring the actual income, expenditures, and cash flow against the budget, and shall report complete financial operations to the Board on a timely basis.

(3) The Finance/Budget Committee shall establish procedures for and implement the preparation of a budget for the ensuing fiscal year and shall recommend an income and expenditure budget to the Board based upon the estimates from the various committees and/or operating components reporting to the Board.

(4) The Finance/Budget Committee shall develop, at least biennially, a five year forecast of financial operations.

(b) **Architectural Review Committee.** An Architectural Review Committee shall be established and shall conduct the architectural review within the community in accordance with Article VII of the Declaration.

(c) **Social Committee.** The Social Committee shall plan social functions to bring the Owners together and provide opportunities for social interaction. The Committee shall coordinate with the Activities Coordinator in organizing and implementing social functions.

(d) **Amenities Committee.** The Amenities Committee shall provide oversight of the management company in providing for the proper maintenance and repair of the Common Property.

(e) **Planning and Development Committee.** The Planning and Development Committee shall consider those issues perceived to be important but not presently under consideration by the Board. Generally, these issues will have significant impact on the community. All recommendations by the Committee shall be forwarded to the President for consideration by the Board.

Section 6. Special Committees.

The President shall have the power to create, with approval of the Board, from time to time such other special committees as he or she deems necessary or advisable (i.e., welcome, library, reserve study, etc.).

ARTICLE VII MEETINGS

Section 1. Meetings of Directors.

(a) **Notice Requirement.** Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings 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) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or electronic communication at least 72 hours before the time set for the meeting.

(b) **Regular Meetings.** The Board shall meet at least once each quarter of the fiscal year.

(c) **Special Meetings.** Special meetings of the Board shall be held when called by any officer or by any two (2) directors.

(d) **Transaction of Business; Waivers and Consents.** The transaction of any business at any meeting of the Board, however called and noticed or whenever 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 director not present signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes. All such waivers, consents, or approvals shall be filed with the corporate records and made a part of the minutes of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

(e) **Quorum of Board.** A majority of the Board 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 Board's decision, unless South Carolina law, these By-Laws or the Declaration specifically provide otherwise.

(f) **Telephonic Participation in Meetings.** Members of the Board or any committee may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

(g) **Open Meetings; Executive Session.** Subject to the provisions of this subsection and subsection (h), all Board meetings shall be open to attendance by all Members or their representatives, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak. The Board shall make agendas for its meetings reasonably available for examination by all Members or their representatives prior to the meeting. Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may restrict attendance to directors and such other persons as the Board may specifically invite and announce during the open portion of the Board meeting, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel

matters, and such other matters as the South Carolina Nonprofit Corporation Act may specifically authorize.

(h) **Action Without a Meeting.** Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if one or more written consents setting forth the action so taken is signed by all of the directors and filed in the Association's records. Such consent shall have the same force and effect as a vote at a meeting.

Section 2. Meetings of the Members of the Association.

(a) **Annual Meetings.** The Board shall schedule regular annual meetings to occur on or about October 15th of the Association's fiscal year, on such date and at such time and place as the Board shall determine and set forth in the notice of the meeting pursuant to Section 2(a).

(b) **Special Meetings.** Special meetings of the Members for any purpose may be called at any time by the President, Vice President, Secretary or Treasurer, or by any two (2) or more directors, and shall be called upon written request of Members entitled to cast at least five percent (5%) of the total eligible votes in the Association. If a notice for a special meeting demanded by the Members under this Section is not given within thirty (30) days after the date the written demand is delivered to the President or Secretary of the Association, the Member(s) demanding such special meeting may set the time and place of the meeting and give notice pursuant to subsection (c) below.

(c) **Notice of Meetings.** Notice of any meeting of the Members shall be given to the Members by the Secretary. Notice may be given to each Member either personally by delivery to the Dwelling Unit address, or by sending a copy of the notice by first class mail, postage prepaid, to the address of the Dwelling Unit of the Member or such other address of the Member appearing on the books of the Association. Each Member shall register his address with the Secretary.

Notice of any meeting, regular or special, shall be delivered as set forth above no more than forty-five (45) days, and not less than fifteen (15) days in advance of the meeting. The notice shall state the date, time, and location of the meeting and shall set forth in general the nature of the business to be transacted at the meeting, provided, that if business of any meeting shall involve and be governed by the Declaration or any action for which other provision is made in these By-Laws, notice of such meeting shall be given or sent as therein or herein provided.

(d) **Waiver of Notice.** Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a 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.

(e) **Quorum for Membership Meetings.** Except as these By-Laws or the Declaration otherwise provide, the presence of Members, either in person or by proxy, entitled to cast at least thirty (30%) of the total Association vote shall constitute a quorum for the transaction of business.

(f) **Action Without a Meeting.** Any action that may be taken at any meeting of the Members may be taken without a meeting if the Secretary delivers a written ballot to every Member entitled to vote on the matter, which ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this subsection is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of directors; and (iii) specify the time by which a ballot must be received by the Association in order to be counted. Once cast, a written ballot may not be revoked.

(g) **Proxies.** At all membership meetings, Members may vote in person or by proxy, subject to the limitations of South Carolina law and subject to any specific provision to the contrary in the Declaration or these By-Laws. All proxies shall be in writing, shall identify the Property for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, and shall be filed with the Secretary prior to the meeting for which the proxy is given. No proxy may extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon transfer by the Member of his interest in the Property. Every proxy is revocable at any time at the pleasure of the Member who executes the proxy.

ARTICLE VIII DISCIPLINARY PROCEDURES

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration or South Carolina law, the Board shall comply with the following procedures prior to imposition of sanctions:

Section 1. Notice and Response.

The Board or such person or committee to which it delegates such responsibility, shall serve the alleged violator with written notice, by certified mail, return receipt requested, (a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable; (b) describing the proposed sanction to be imposed; and (c) informing the alleged violator that he or she has 10 days after receipt of the notice to present a written request for a hearing; and (d) informing the alleged violator that he or she may avoid the proposed sanction by curing the violation within a reasonable cure period stated in the notice, except that the Association shall have no obligation to provide a cure period if the alleged violator has been given notice of a similar violation within the preceding six

months. If the hearing is to be held before a committee appointed for such purpose, the notice shall also state that the alleged violator has the right to appeal the committee's decision to the Board.

The alleged violator shall respond to the notice of the alleged violation in writing within such 10-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction, or the proposed sanction shall be imposed. If the alleged violator cures the alleged violation and notifies the Board in writing within such 10-day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or committee, as applicable. 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 requests and appears at the hearing.

Section 2. Hearing.

If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Board (or a committee which it has appointed for such purpose, if any) in executive session within 14 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 14 days and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing. At the hearing, the alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make an audio recording of the hearing. The minutes of the meetings of the Board or committee, as applicable, shall contain a written statement of the outcome of the hearing (i.e., the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within five days after the hearing.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed unless the violation is cured within the cure period stated in the notice.

Section 3. Appeal.

If a hearing is conducted by a committee appointed by the Board, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

**ARTICLE IX
CORPORATE SEAL**

The Secretary is not required to, but may, have a seal in circular form having within its circumference the name of the Corporation, the year of its organization, and the words "Corporate Seal, South Carolina."

**ARTICLE X
AMENDMENTS**

These By-Laws may be amended or repealed and new By-Laws adopted at a duly called regular or special meeting of the Members by a majority of the vote represented in person or by proxy at a duly called meeting being cast in favor of such amendment, provided that no amendment to these By-Laws shall be inconsistent with the Declaration.

**ARTICLE XI
FISCAL YEAR**

The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

**ARTICLE XII
GENERAL**

Section 1. Conduct of Meetings.

All meetings of the Members and of the Board of Directors shall be conducted in accordance with Robert's Rules of Order (current edition) when not in conflict with South Carolina law or the Governing Documents.

Section 2. Conflicts.

In the case of any conflict between the provisions of South Carolina law, the Declaration, these By-Laws, and the Articles of Incorporation, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

CERTIFICATION

I the undersigned do hereby certify:

That I am the duly elected and acting Secretary of The Elms Homeowners Association, a South Carolina nonprofit corporation.

That the foregoing Amended and Restated By-Laws of The Elms Homeowners Association were adopted by a majority of the votes represented in person or by proxy at a meeting of the Association held on October 20,2005, at which a quorum was present.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Association this 25th day of January, 2006.

 [SEAL]
Secretary

**AMENDED AND RESTATED BY-LAWS
OF
THE ELMS HOMEOWNERS ASSOCIATION**

WHEREAS, the By-Laws of The Elms Homeowners Association, as amended (the "By-Laws") were adopted on March 22, 1991; and

WHEREAS, the Members of The Elms Homeowners Association ("Association") desire to further amend the By-Laws; and

WHEREAS, pursuant to Article XVI, Section 1, of the By-Laws, the By-Laws may be amended at a regular or special meeting of the Members by the affirmative vote of Members entitled to cast a majority of the vote represented at such meeting, provided that the Company has turned control over to the Association; and

WHEREAS, the Company is no longer in control of the Association; and

WHEREAS, at a duly called meeting of the Members held on October 20, 2005, the Members approved amendments to the By-Laws as set forth in the Amended and Restated By-Laws of The Elms Homeowners Association attached hereto; and

NOW THEREFORE, the By-Laws are hereby amended and restated as follows:

FIRST AMENDMENT TO THE AMENDED AND RESTATED BY-LAWS OF THE ELMS HOMEOWNERS ASSOCIATION

WHEREAS, Amended and Restated By-Laws of The Elms Homeowners Association ("By-Laws") were approved and adopted by the requisite vote of the membership of The Elms Homeowners Association ("Association") at its annual meeting on October 20,2005; and

WHEREAS, pursuant to Article X of the By-Laws, the By-Laws may be further amended by a majority of the votes represented in person or by proxy at a duly called meeting of the Members; and

WHEREAS, the Board has proposed to further amend the By-Laws to clarify the provisions of Article IV, Section 8(a) relating to unbudgeted expenditures; and

WHEREAS, at a duly called meeting of the Members held on January 19, 2006, the following amendment was approved by members represented in person or by proxy and entitled to cast a majority of the votes represented at such meeting;

NOW THEREFORE, Article IV, Section 8(a) is hereby amended to read as follows:

Section 8. Limitations on Certain Actions.

(a) Unbudgeted Expenditures. Except in an emergency situation, any unbudgeted expenditure that exceeds five percent (5%) of the annual operating budget shall require the approval of Members entitled to cast a majority of the votes cast in person or by proxy at a duly called meeting of the membership. Any expenditure from the Association's reserve fund for purposes of maintenance, repair or replacement of items contemplated by the Association's reserve budget or any supporting reserve study shall be considered a budgeted expenditure which is not subject to this limitation, notwithstanding that the reserve study may estimate the useful life of the item to extend beyond the current year and/or may estimate the replacement cost to be less than the actual cost.

(b)

[continued on next page]

IN WITNESS WHEREOF, the undersigned officers certify that the foregoing Amendment has been approved by the requisite vote of the Members as of this 25th day of January, 2006.

BK L 571PG125

THE ELMS HOMEOWNERS ASSOCIATION,
A South Carolina nonprofit corporation



By: Charlie Bevels
Name: CHARLIE BEVELS
Its: President

Attest: Anna W Stephens
Name: ANNA W STEPHENS
Its: Secretary