

**THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO THE  
SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10. et. seq.,  
CODE OF LAWS OF SOUTH CAROLINA, 1999**

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR  
THE PENINSULA**

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

**FOR**

**THE PENINSULA**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 12 day of December, 2002, by D.R Horton, Inc, a Delaware corporation ("Declarant").

**Article I      Creation of the Community**

1.1      Purpose and Intent

Declarant, as the owner of the real property, or if not the owner has the owner's consent, described in Exhibit "A," intends by Recording this Declaration to create a general plan of development for the residential community known as the Peninsula This Declaration provides a flexible and reasonable procedure for the future expansion of the Peninsula to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Peninsula An integral part of the development plan is the creation of the Peninsula Community Association, Inc. ("Association"), an association comprised of all Owners of real property in the Peninsula, to own, operate, or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

1.2      Binding Effect

The property described in Exhibit "A," and any additional property which is made a part of the Peninsula in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Peninsula, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended and supplemented from time to time, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 20 years from the date this Declaration is Recorded After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by a majority of the then Owners has been Recorded within

the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such installment. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement

### 1.3 Governing Documents

The Governing Documents create a general plan of development for the Peninsula. Additional restrictions or provisions which are more restrictive than the provisions of this Declaration may be imposed on any portion of the Peninsula, in which case, the more restrictive provisions will be controlling. However, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of the Peninsula without Declarant's written consent, so long as Declarant has the right unilaterally to annex property to the Community. Thereafter, Owners representing at least 75% of the Association's total votes must consent. Any instrument Recorded without the required consent is void and of no force and effect.

All provisions of the Governing Documents shall apply to all Owners and to all occupants of their Units, as well as their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

## **Article II      Concepts and Definitions**

The terms used in the Governing Documents generally shall be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Architectural Guidelines" The architectural, design, and construction guidelines and review procedures adopted pursuant to Article V, as they may be amended.

"Area of Common Responsibility" The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles of Incorporation" or "Articles" The Articles of Incorporation for the Peninsula Community Association, Inc, a South Carolina nonprofit corporation.

"Association" The Peninsula Community Association, Inc, a South Carolina nonprofit corporation, its successors or assigns.

"Base Assessment". Assessments levied on all Units subject to assessment under Article IX to fund Common Expenses, as determined in accordance with Section 9.1.

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

"By-Laws". The By-Laws of the Peninsula Community Association, Inc, attached for informational purposes as Exhibit "D," as may be amended

"Common Area". All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the Owners' common use and enjoyment.

"Common Expenses". The actual and estimated expenses the Association incurs or expects to incur for all Owners' general benefit, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total vote of the Association, excluding votes held by Declarant

"Community-Wide Standard". The standard of conduct, maintenance, or other activity generally prevailing in the Peninsula, or the minimum standards established pursuant to the Architectural Guidelines, Rules and Regulations, and Board resolutions, whichever is the highest standard Declarant shall establish initially such standard, and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Peninsula change

"Declarant". D R Horton, Inc, a Delaware corporation, or any successor or assign who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant

"Declarant Control Period". The period of time during which Declarant is entitled to appoint a majority of the members of the Board as provided in the By-Laws. The Declarant shall have the right to appoint and remove the members of the Board until the first of the following occurs-

(a) when 75% of the Units permitted for development within the property described on Exhibit "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Persons who have not purchased such Units for the purpose of construction of a residence and resale of such Unit and residence;

(b) 10 years after this Declaration is Recorded, or

(c) upon Declarant's surrender in writing of the authority to appoint and remove directors and officers of the Association.

Notwithstanding its right to appoint and remove officers and directors of the Association, Declarant reserves the right to approve or disapprove specified actions of the Association as provided in the By-Laws.

"Declaration". This Declaration of Covenants, Conditions, and Restrictions for the Peninsula, as it may be amended or supplemented from time to time.

"The Peninsula" or "Community". The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article XI.

"Governing Documents". A collective term referring to this Declaration, any applicable Supplemental Declaration, the By-Laws, the Articles, the Architectural Guidelines, and the Rules and Regulations, as each may be amended.

"Limited Common Area". A portion of the Common Area reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the Townhome Units.

"Master Plan". The land use plan for the development of the Peninsula Subdivision approved by the City of Charleston, Charleston County, South Carolina, as it may be amended, which includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article XI.

"Member". A Person subject to membership in the Association pursuant to Section 7.3.

"Mortgage". A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. "Mortgagee" shall refer to a beneficiary or holder of a Mortgage. A "First Mortgage" shall be a Recorded Mortgage having first priority over all other Mortgages encumbering a Unit. "First Mortgagee" shall refer to a beneficiary or holder of a First Mortgage.

"Neighborhood". A separately developed and denominated residential area within the Community which has been so designated on Exhibit "A" hereof or in one or more Supplementary Declarations. By way of illustration and not limitation, a townhouse development, cluster home development, or single-family detached housing development might each be designated as a separate Neighborhood. The Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the

Community A Neighborhood may (but is not required to) have a separate incorporated mandatory membership Neighborhood association.

"Neighborhood Assessments". Assessments levied in accordance with Section 9.4 "Neighborhood Expense" shall mean the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplementary Declarations) applicable to such Neighborhood(s).

"Owner". One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) shall be considered the Owner.

"Person" An individual, corporation, partnership, trustee, or any other legal entity.

"Record," "Recording," or "Recorded". The appropriate recordation or filing of any document in the Office of the Register of Deeds of Charleston County, South Carolina, or such other place which is designated as the official location for recording deeds and similar documents affecting title to real estate The date of Recording shall refer to that time at which a document, map, or plat is Recorded.

"Rules and Regulations". The initial rules and regulations set forth in Exhibit "C," as they may be supplemented, modified, and repealed pursuant to Article IV

"Special Assessment". Assessments levied in accordance with Section 9.2.

"Specific Assessment". Assessments levied in accordance with Section 9.3.

"Supplemental Declaration". A Recorded instrument which subjects additional property to this Declaration pursuant to Article XI, designates Neighborhoods pursuant to Article XII, and/or imposes additional restrictions and obligations on the land described in such instrument.

"Townhome Unit". Townhome Units are Units Moreover, a Townhome Unit consists of any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a townhome that will be attached by one or more party walls to another townhome Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units The ownership of each Townhome Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units that are appurtenant to and serve each Townhome Unit (including, but not limited to, compressors, conduits, wires and pipes) and any

driveway, porch, deck, patio, steps, wall, roof, foundation, sunroom, or any similar appurtenance as may be attached to a Townhome Unit when such Townhome Unit is initially constructed.

"Unit". A portion of the Peninsula, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached angle-family residence. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon, in the case of a building within a condominium or townhome structure containing multiple dwellings for individual sale, each such dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent. After improvements are constructed, the portion encompassed by such plan shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plan shall continue to be treated in accordance with this paragraph.

### **Article III Use, Occupancy, and Transfer**

#### **3.1. General**

Every Unit in the Community shall be subject to the use restrictions and rules as set forth in this Article. Each Owner, by acceptance of a deed or other instrument granting an interest in any Unit, acknowledges and understands that the use of such Unit is subject to Rules and Regulations and restrictions on occupancy and transfer, as they may be expanded, modified, or otherwise amended in accordance with the procedures set forth in Article XVII.

#### **3.2. Restrictions on Use**

The Peninsula shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center, models, or sales office for any real estate broker retained by Declarant or builders approved by Declarant to assist in the sale of real property within the Peninsula, offices for any property manager retained by the Association, or business offices for Declarant, approved builders, or the Association) consistent with the Governing Documents. Notwithstanding the above, home business use ancillary to the primary residential use of a Unit is permitted subject to the Rules and Regulations.

#### **3.3 Restrictions on Occupancy.**

All occupants of a single Unit shall be a member of a single housekeeping unit. The number of occupants in each Unit shall be limited to a reasonable number based on the Unit's facilities and size and its fair use of the Common Area.

### 3.4 Restrictions on Transfer, Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the Board receives such notice, notwithstanding the transfer of title.

## **Article IV    Conduct**

### 4.1 Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for the Peninsula, a framework of affirmative and negative covenants, easements, and restrictions to govern the Peninsula. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology which inevitably will affect the Peninsula, its Owners, and residents. Toward that end, this Article establishes procedures for modifying and expanding the initial Rules and Regulations set forth in Exhibit 'C'.

### 4.2 Regulation Making Authority

(a) Board Authority. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt, repeal, and modify regulations governing matters of conduct and aesthetics and the activities of Members, residents, and guests within the Peninsula. The Board shall send notice by mail to all Members concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(b) Members' Authority Alternatively. Members representing more than 50% of the total votes in the Association, at an Association meeting duly called for such purpose, may vote to adopt regulations which modify, cancel, limit, create exceptions to, or expand the Rules and Regulations then in effect. Such action shall require Declarant's approval so long as Declarant has the right unilaterally to annex property to the Community.

(c) Notice, Opportunity To Disapprove. Notice of any Board resolution or Member action adopting, repealing, or modifying regulations shall be sent to all Members at least 30 days prior to the effective date. Subject to Declarant's disapproval rights under the By-Laws, the resolution or Member action shall become effective on the date specified in the notice unless (i) Members petition for a special meeting, in accordance with the By-Laws, to reconsider such resolution, and (ii) the resolution is

disapproved at the meeting by Members representing more than 50% of the total votes in the Association.

(d) Conflicts. Nothing in this Article shall authorize the Board or the Members to modify, repeal, or expand the Architectural Guidelines or other provisions of this Declaration In the event of a conflict between the Architectural Guidelines and the Rules and Regulations, the Architectural Guidelines shall control.

(e) Common Area Administrative Rules. The procedures required under this Section shall not apply to the enactment and enforcement of Board resolutions or administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times The Board shall exercise business judgment and act in accordance with the business judgment rule, as described in the By-Laws, in the enactment, amendment, and enforcement of such administrative rules and regulations

(f) Limitations. Except as may be contained in this Declaration either initially or by amendment or in the initial Rules and Regulations set forth in Exhibit "C," all Rules and Regulations shall comply with the following provisions

(i) Similar Treatment. Similarly situated Owners shall be treated similarly.

(ii) Signs and Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

No rules shall regulate the content of political signs, however, rules may regulate the time, place, and manner of posting such signs (including design criteria) and limit to a reasonable number the number of signs that may be posted Each Owner may erect or post one "for sale," "for rent," or "garage sale" sign within the Community during the time that the Owner's Unit is being offered for sale or for rent or to advertise a sale, in accordance with applicable Board rules, provided that such Owners shall be responsible for removing such sign in a timely manner and shall be subject to enforcement actions for failing to do so.

(iii) Household Composition. No rule established pursuant to this Article shall interfere with the Owners' freedom to determine the composition of their households Section 3.3 shall govern restrictions on occupancy.

(iv) Activities Within Dwellings. No rule established pursuant to this Article shall interfere with the activities earned on within the confines of dwellings, except that the Association may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that

create a danger to the health or safety of others, that generate excessive noise, parking congestion, or traffic, that create unsightly conditions visible outside the dwelling; or that create an unreasonable source of annoyance

(v) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the Governing Documents This provision does not affect the right to increase the amount of assessments as provided in Article IX.

(vi) Alienation. No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Unit or require consent of the Association or Board for leasing or transfer of any Unit, however, the Association or the Board may require a minimum lease term of up to 12 months The Association may require that Owners use lease forms approved by the Association but shall not impose any fee on the lease of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease

(vii) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule and which was in compliance with all rules previously in force This dispensation shall apply only for the duration of such Owner's ownership of the Unit personally, and this right shall not run with title to any Unit

(viii) Reasonable Rights To Develop. No rule or action by the Association shall unreasonably impede Declarant's right to develop the Community in accordance with the rights reserved to Declarant in this Declaration.

The limitations in subsections (i) through (viii) of this subsection 4.2(f) shall limit only regulation making authority exercised under this Section, they shall not apply to amendments to this Declaration adopted in accordance with Article XVII.

#### 4.3 Owners' Acknowledgment and Notice to Purchasers.

All Owners and prospective purchasers are given notice that use of their Units and the Common Area is limited by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision, that the Rules and Regulations may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded instrument All purchasers of Units are on notice that the Association may have adopted changes to the Rules and Regulations The Association shall provide a copy of the current Rules and Regulations to any Member or Mortgagee upon request and payment of the reasonable cost of such copy.

## **Article V     **Architecture and Landscaping****

### **5.1     General**

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on such Unit except pursuant to approval in compliance with this Article and the Architectural Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, modifications to the interior of a Unit visible from outside the structure shall be subject to approval.

Any improvements constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by Declarant or its designee in its sole discretion.

This Article shall not apply to Declarant's activities or to the Association's activities during the Declarant Control Period.

### **5.2     Architectural Review**

(a)     By Declarant. Each Owner, by accepting a deed or other instrument conveying any Unit, acknowledges that, as the developer and owner of real estate in the vicinity of and within the Peninsula, Declarant has a substantial interest in ensuring that improvements within the Community enhance Declarant's reputation and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that he or she shall not commence any activity within the scope of this Article on his or her Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designers sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Peninsula or has the right to expand the Peninsula pursuant to Section 11.1, unless earlier terminated in a written instrument executed and Recorded by Declarant

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to any other Person or committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of any other Person or committee shall be limited to such matters as are specifically delegated to it by Declarant.

(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through an architectural review committee appointed by the Board ("ARC"), shall assume jurisdiction over architectural matters. The ARC shall consist of at least three, but not more than seven, Persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be representatives of Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Association or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Reviewer. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer".

(d) Fees, Assistance. The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

### 5.3 Guidelines and Procedures

(a) Architectural Guidelines. Declarant may prepare Architectural Guidelines applicable to Units which may contain general provisions applicable to all Units as well as specific provisions which vary among the Units according to location, Neighborhood, use, or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of, or has a right to expand the Peninsula pursuant to Section 11.1, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend. Upon

termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the Board's consent Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable notice during the Association's business hours In Declarant's discretion, such Architectural Guidelines may be Recorded, in which event the Recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures. Except as the Architectural Guidelines otherwise specifically provide, no activity described in Section 5.1 shall commence on any Unit until an application for approval has been submitted to and approved by the Reviewer Such application shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as deemed necessary to consider any application

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment Decisions may be based solely on aesthetic considerations Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements. Subject to Declarant's veto power described below, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures described in this Article

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information The Reviewer 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 The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three business days after the ARC has approved an application. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

In any event, the Reviewer shall notify the applicant in writing of a final determination within 45 days after its receipt of a completed application and all required information. In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Reviewer has granted 3 variance pursuant to Section 5.5.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the US Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer 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, Declarant, or any aggrieved Member.

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

#### 5.4. No Waiver of Future Approvals

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 5.5 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration, or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to

obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### 5.6 Limitation of Liability.

The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements, (c) that Units are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Units or the Area of Common Responsibility are protected, or (e) that no defects exist in approved construction.

Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not 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 actions, 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 of approved construction on or modifications to any Unit, in all matters, the Association shall defend and indemnify the Board, the ARC, and any members thereof as provided in Section 8 7

#### 5.7 Certificate of Compliance

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that such Owner's Unit has no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

#### 5.8 View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

## **Article VI Maintenance and Repair**

### **6.1 Maintenance of Single Family Detached Units**

The maintenance provisions set forth in this Section 6.1 apply to all Units except Townhome Units (Maintenance of Townhome Units shall be done in accordance with Article X.) Each Owner shall maintain his or her Unit and all landscaping, irrigation systems, and other improvements comprising the Unit in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants unless the Association assumes such maintenance responsibility pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

Except as provided in a Supplemental Declaration, each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or right-of-way within 10 feet of the Unit boundary; however, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article V.

### **6.2 Responsibility for Repair and Replacement**

Unless the Governing Documents or other instruments creating and assigning maintenance responsibility specifically provide otherwise, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner pursuant to Section 9.3.

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

## **Article VII The Association and its Members**

### **7.1 Function of Association**

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and South Carolina law.

### **7.2 Board of Directors**

The Board shall govern the Association as more particularly described in the By-Laws. Except as to matters specifically requiring Members' approval as set forth in the Governing Documents, the Board may exercise all rights and powers granted to the Association without membership approval.

### **7.3 Membership.**

(a) Qualification. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by 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 Section 7.3 (b) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners under this Declaration and the other Governing Documents. The membership rights of an Owner that is not an individual may be exercised by any officer, director, partner, member, manager of a limited liability company, 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.

(b) Voting. As to all matters with respect to which Members are given the right to vote under the Governing Documents, each Member, including Declarant, shall be entitled to one vote for each Unit he or she owns. No vote shall be exercised for any property that is exempt from assessment under Section 9.10.

In any situation where a Member is entitled to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(c) Transfer of Membership. Membership in the Association is appurtenant to Unit ownership and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon a transfer of title to such Unit, and then only to the transferee. Any prohibited transfer of an Association membership shall be void and of no force or effect. Any transfer of title or interest to a Unit shall operate automatically to transfer the appurtenant membership rights in the Association to the

new Owner. Prior to any transfer of title to such a Unit, the transferring Owner shall give seven days' prior written notice to the Board of such transfer, which shall include the name and address of the acquiring Owner and the date of transfer.

## **Article VIII Association Powers and Responsibilities**

### **8.1. Acceptance and Control of Association Property.**

(a) The Association may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 16.2 and 17.2 Declarant shall transfer the initial Common Area to the Association prior to the conveyance of a Unit to any Person other than a builder.

(b) Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibit "A" or "B." The Association shall accept and maintain such property at its expense for the Members' benefit, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Community originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

### **8.2. Maintenance of Area of Common Responsibility.**

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to.

(a) all portions of and structures situated on the Common Area, including but not limited to the private streets, sidewalks and parking areas serving the Peninsula, if any;

(b) landscaping and traffic islands within public rights-of-way within or abutting the Peninsula;

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

(d) all lakes, ponds, streams, or wetlands located within the Peninsula which serve as part of the stormwater drainage system, and improvements and equipment installed therein or used in connection therewith;

(e) any part of the irrigation system for the Peninsula, if any, installed by Declarant and located within the Peninsula and all improvements and equipment used in connection therewith, including irrigation ditches, head gates, and siphons;

(f) any Community Systems installed in Units by Declarant and located within the Community;

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

(h) Townhome Units as more particularly set forth in Article X.

The Association may maintain other property it does not own, including, without limitation, publicly-owned property, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Neither Declarant nor the Association guarantees that drainage will flow off the Area of Common Responsibility on the intended drainage course. Neither Declarant nor the Association shall bear any responsibility for ensuring that drainage follows intended drainage patterns off the Area of Common Responsibility.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing at least 75% of the votes in the Association and, so long as Declarant has the right unilaterally to annex property, Declarant agrees in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with Declarant's prior written approval so long as Declarant has the right unilaterally to annex property.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense or a Neighborhood expense, provided, the Association may seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the Owner(s) thereof.

### 8.3 Insurance

(a) Required Coverage's. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage's as are reasonably available

(i) blanket property insurance for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes

The Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Association under any such policies and shall have full power to receive and to deal with such proceeds The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, except as otherwise provided in this Section,

(ii) commercial general liability insurance on the Area of Common Responsibility Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Area of Common Responsibility The Board shall use its business judgment in deciding upon per occurrence limits for such coverage and shall consider any applicable secondary mortgage guidelines relating to such coverage

The liability insurance shall name, as separately protected insured's, Declarant, any property manager, the Association, the Board, the ARC, and their respective representatives, members, agents, and employees with respect to any liability arising out of the maintenance or use of the Area of Common Responsibility,

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

(iv) directors' and officers' liability coverage,

(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 annual Base Assessments on all Units 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 its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall include such premiums in the assessments it levies. The Board shall review the limits of all Association insurance policies at least once a year and shall adjust the policy limits as the Board deems necessary or appropriate.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with replacement costs in the Charleston County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owners) and their Units as a Specific Assessment pursuant to Section 9.3.

All insurance coverage obtained by the Board shall:

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

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members,

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

(iv) contain an inflation guard endorsement,

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

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association or interest in the Common Area as a

Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

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

(viii) include an endorsement precluding the insurer from denying a claim by an Owner or conditioning recovery under the policy based upon or due to the negligent acts or omissions of the Association or any other Owner.

(c) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insured's for claims arising in connection with the ownership, existence, use, or management of the Common Area and provide:

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

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

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

#### 8.4. Repair and Reconstruction of Association Property.

The Association shall have the authority and the duty to repair or reconstruct Common Area or other property which the Association is obligated to insure ("Insured Property") that is damaged or destroyed unless such repair or reconstruction would be illegal under any state or local ordinance governing health or safety, or Members representing 75% of the total vote of the Association vote not to repair or reconstruct.

Except as otherwise provided in this Section, the Board diligently shall pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Association may take all necessary or appropriate action to effect such repair or reconstruction. Such repair or reconstruction shall be in accordance with the original plans and specifications unless other plans are approved by a vote of Members representing at least 51% of the total vote of the Association and the Reviewer pursuant to Article V.

The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of Insured Property. If the proceeds of insurance are insufficient to pay the

estimated or actual cost of such repair or reconstruction, then the Board, pursuant to Section 9.2, may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article IX. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Article IX constitute a fund for the payment for costs of repair or reconstruction after casualty. If a balance exists after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners of the Units in proportion to the contributions made by each Owner to the Association.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The cost of removal and landscaping shall be paid for with insurance proceeds. The Association shall retain the remaining proceeds in its general or other funds or shall allocate or distribute such funds as the Board determines appropriate, provided any such distribution of insurance proceeds shall be proportionate to the Members' interests.

#### 8.5 Compliance and Enforcement

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violating the Governing Documents after notice and an opportunity for a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation;

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (In the event that any occupant, guest, or invitee of an Owner violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator, however, if the violator does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Board),

(ii) suspending an Owner's right to vote,

(iii) suspending any services the Association provides to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association,

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation,

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit that violates Article V and to restore the Unit to its previous condition and, upon the Owner's failure to do so, the Board or its designee shall have the right to enter

the property, remove the violation, restore the property to substantially the same condition as previously existed, and levy a Specific Assessment against the Owner's Unit in accordance with Section 9.3. Any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article V and the Architectural Guidelines from continuing or performing any further activities in the Community; and

(vii) levying a Specific Assessment against an Owner in the manner provided in Section 9.3 to collect any costs the Association incurs in curing any violation, plus a reasonable administrative fee to discourage noncompliance, or to collect any fine that remains unpaid for a period of 10 days or more.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of complying with the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), and

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs the Association incurs against the Unit and the Owner as a Specific Assessment pursuant to Section 9.3. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) 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. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of 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) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable county ordinances, and Charleston County may enforce its ordinances within the Community.

#### 8.6. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the Association's rights and powers, making decisions on the Association's behalf, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

#### 8.7. Indemnification of Officers, Directors, and Others.

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

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

Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in the By-Laws.

#### 8.8 Security

The Association may, but shall not be obligated to, maintain or support certain activities, structures, or devices within the Peninsula designed to make The Peninsula safer than it otherwise might be. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Peninsula, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant are not insurers of safety within the Peninsula and that each Person using the Peninsula assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

#### 8.9 Provision of Services

The Association may provide or provide for services and facilities for the Members, then-guests, lessees, and invitees, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use and consumption fees for such services and facilities. By way of example, some services and facilities which might be offered include landscape maintenance, pest control service, cable television service, security, caretaker services, transportation, fire protection, garbage collection, utilities, including access to fiber optics networks, and similar services and facilities. Nothing herein shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board, in its discretion, shall be permitted to modify or cancel existing services provided unless otherwise required by the Governing Documents. No Owner shall be exempt from the obligation.

to pay for such services, if provided to all Owners as a Common Expense, based upon non-use or any other reason.

8.10. Relations with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to address issues of an area-wide concern. Examples of issues which may be addressed include road and right-of-way maintenance, drainage issues, open space, and to contribute funds for, among other things, shared or mutually beneficial property or services for a higher level of Common Area maintenance.

**Article IX Association Finances**

9.1. Budgeting and Allocating Common Expenses.

Until the Association first levies assessments, Declarant shall be responsible for all Common Expenses. Thereafter, assessments for Common Expenses shall be levied at least annually in accordance with this Article.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The budget shall include any contributions to be made to a reserve fund for repair and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 9.5.

The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under Section 9.5 to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by paying any deficit between the Common Expenses and Association funds collected pursuant to the current year's budget, or any portion of any such deficit (in addition to any amounts paid by Declarant under Section 9.7), which may be a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such deficit payment shall be disclosed as a line item in the income portion of the budget. Payment of such deficit, or portion thereof, in any year shall not obligate Declarant to continue payment of such deficit in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a summary of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner within 30 days of adoption of the proposed budget and at least 30 days prior to the effective date of such budget. The notice shall set a date for a meeting of the Members to consider the budget, which shall be not less than 14 or more than 30 days after mailing of the summary. The budget automatically shall become effective unless Members representing at least 75% of the votes in the Association disapprove such budget at a meeting.

If Members disapprove any proposed budget or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

## 9.2 Special Assessments

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least 51% of the total votes allocated to Units subject to such Special Assessment and the consent of Declarant during the Declarant Control Period. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

## 9.3 Specific Assessments

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

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 8.9). The Association may levy Specific Assessments for special services in advance of the provision of the requested service, and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests, provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

#### 9.4 Neighborhood Assessments

The Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors for expense items such as maintenance, garbage collection, insurance, or special services. In addition, the Board shall levy a Neighborhood Assessment upon the request of the Owners holding two-thirds (2/3) of the total association vote applicable to Units within a Neighborhood.

#### 9.5 Authority To Assess Owners. Time of Payment

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the sale of a Unit to a Person other than Declarant or a Declarant approved builder and the issuance of a certificate of occupancy for a residential dwelling on such Unit. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board provides otherwise, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### 9.6 Personal Obligation for Assessments

Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of South Carolina law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be each Owner's personal obligation and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

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

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, 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.

#### 9.7. Budget Deficits During Declarant Control

During the Declarant Control Period, Declarant may (but shall not be required to):

(a) Advance funds to the Association sufficient to satisfy the deficit, if any, between the Association's actual operating expenses and the sum of the Base, Special, Neighborhood, and Specific Assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of Declarant. Declarant's failure to obtain a promissory note shall not invalidate the debt,

(b) Cause the Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan, or

(c) Acquire property for, or provide services to, the Association or the Common Area. Declarant shall designate the value of the property or the services provided, and such amounts, at Declarant's request, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

#### 9.8 Statement of Account

Upon written request of any Member, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting Person personally or by certified mail, first-class postage prepaid, return receipt requested. The Association may require the payment of a reasonable processing fee for issuance of such statement.

Such statement shall bind the Association in favor of Persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all unpaid assessments that became due before the date of

making such request shall be subordinate to the lien of a Mortgagee that acquired its interest after requesting such statement.

#### 9.9 Lien for Assessments

Subject to the limitations of any other applicable provisions of South Carolina law, the Association shall have a statutory lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection (including attorneys' fees) Such lien shall be perfected upon the Recordation of this Declaration.

Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (b) the lien or charge of any Recorded First Mortgage made in good faith and for value, and (c) labor or materialmen's liens, to the extent required by law.

Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of Mortgages under South Carolina law All such costs and expenses of any such foreclosure shall be secured by the lien being foreclosed.

The Association may bid for the Unit, as applicable, at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit While a Unit is owned by the Association following foreclosure (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had the Association not acquired it The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments However, the sale or transfer of any Unit pursuant to foreclosure of the First Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure, except as otherwise provided in this Section Uncollected assessments shall be deemed Common Expenses collectible from Owners of all Units subject to assessment under Section 9 5, including such acquirer, its successors, and assigns The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 9 5, including such acquirer, its successors, and assigns.

#### 9.10 Exempt Property

The following property shall be exempt from payment of Base Assessments, Specific Assessments, Special Assessments, and Neighborhood Assessments.

(a) all Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility, and

(b) any property dedicated to and accepted by any governmental authority or public utility.

9.11. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

**Article X     Townhome Neighborhood**

10.1. Creation of The Peninsula Neighborhood.

Declarant has included this Article to set forth standards and procedures for the overall development, administration, maintenance, and presentation of the Peninsula town as a Neighborhood within the Community.

10.2. General

The provisions set forth in this Article shall be applicable only to the Townhome Units within any Neighborhood designated as a "Townhome Neighborhood" and shall be in addition to the covenants, conditions, restrictions and easements set forth in this Declaration. As long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to modify the provisions of this Article as to a particular Townhome Neighborhood or impose additional covenants and restrictions.

10.3. Townhome Unit.

The vertical boundaries of each Townhome Unit are as shown on the applicable subdivision plat recorded in the Office of the Register or Deeds in Charleston County, South Carolina. The Declarant anticipates that each plot of land constituting a Townhome Unit will consist of the land under the footprint of the Townhome Unit. Accordingly, Townhome Unit Owners will not own the front or back yard, if any. All property within the Townhome Neighborhood, not a part of a Townhome Unit, including the front and back yards, will be Common Area maintained by the Association.

10.4. Maintenance

(a) Maintenance of Townhome Units—Owner's Responsibility

Except to the extent that the Association is assigned certain maintenance responsibility for Townhome Units pursuant to Section 6.1 or otherwise agrees to assume certain maintenance responsibility with respect to Townhome Units, each Owner shall be responsible for maintenance, repair, and replacement of his or her Townhome Unit, and shall keep it in good order and repair, and in a neat, clean, and attractive condition consistent with the Community-Wide Standard. Each Owner's maintenance responsibility shall include, but shall not necessarily be limited to,

(i) maintaining, repairing and replacing, as necessary, all pipes, lines, wires, conduits, or other apparatus which serve only the Townhome Unit located wholly within the Townhome Unit boundaries (including all utility lines serving only the Townhome Unit);

(ii) maintaining, repairing, and replacing, as necessary, the exterior surfaces of the Units, including window and window frames, doors and door frames (including garage doors), and any shutters, eaves, fascia, gutters and downspouts on the exterior of the Units; and

(iii) maintaining, repairing, and replacing, if necessary, the foundation and structure of the dwelling on the Townhome Unit,

(iv) maintaining, repairing, and replacing as necessary and pressure washing driveways;

(v) maintaining, repairing, and replacing, as necessary, the roof (including shingles and roof decking) and the rooftop terrace of the Townhome Unit;

(vi) periodic treatment of all exterior walls and foundations of the dwelling for termites,

(vi) maintaining all the landscaping in the front and rear yard of the Townhome Unit, which maintenance shall include mowing lawns, pruning shrubbery, weed control, removal and replacement of dead trees and shrubs, and irrigation;

(vii) maintaining, repairing, and replacing, as necessary, any irrigation equipment (including, without limitation, any sprinklers, water lines, and time clocks, wherever located) serving the front and rear yards of the Townhome Unit, and

(viii) maintaining, repairing, and replacing perimeter landscaping or walls within the perimeter easement area if such perimeter walls or landscaping are initially installed by Declarant in accordance with Section 10 6(a).

## 10.5 Insurance on Townhome Units. Damage to Townhome Units

(a) Required Coverage. Every Owner shall be responsible for obtaining and maintaining at all times insurance covering those portions of his or her Townhome Unit, including contents, not insured by policies maintained by the Association. In addition, to the extent not insured by policies the Association maintains or to the extent insurable losses result in the payment of deductibles under the Association's policies, every Owner shall obtain and maintain at all times insurance covering consequential damages to any other Townhome Unit or the Common Area due to occurrences originating within the Owner's Townhome Unit and caused by the Owner's negligence, the Owner's failure to maintain the Unit, or any other casualty within the Townhome Unit, which causes damage to any other Townhome Unit or the Common Area.

At the Board's request, Owners shall file a copy of each individual policy or policies covering his or her Townhome Unit and personal property with the Board within 10 days after receiving such request. Such Owner shall promptly notify the Board in writing in the event such policy is canceled. Upon resolution of the Board and at least 60 days' prior written notice to each Owner, the Association may, but shall not be required to, obtain as a Neighborhood Assessment a blanket insurance policy providing property insurance coverage for all structures on Townhome Units (exclusive of improvements made by Owners). In such event, the Owners shall be relieved of their insurance responsibility hereunder to the extent such responsibility is assumed by the Association. Following such an assumption of insurance responsibility, the Association may at any time, upon not less than 30 days' written notice to each Owner, discontinue such blanket insurance coverage and in such event each Owner shall immediately obtain in his or her own name and at his or her own expense the insurance coverage for such Owner's Townhome Unit required hereunder.

(b) Repair and Reconstruction. In the event of damage to or destruction of any structures or improvements on the Townhome Unit, the Owner shall proceed promptly to repair, reconstruct, or replace the damaged structures or improvements in a manner consistent with their original condition or such other plans and specifications as are approved in accordance with Article V. The Owner shall pay any costs which are not covered by insurance proceeds.

## 10.6 Party Walls

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction on the Townhome Units which serves and/or separates any two adjoining Townhome Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Maintenance. Damage and Destruction The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Right to Contribution Runs With the Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) Disputes. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

#### 10.7. Townhome Neighborhood Assessments.

Townhome Neighborhood Assessments levied by the Board of Directors in accordance with Section 9.4 hereof may include, without limitation, sums for landscaping maintenance of Common Area located within a Townhome Neighborhood, maintenance of front yards, property taxes, insurance premiums, utility charges for water and electricity for operation of the common fire sprinkler system located in Townhome Units and any irrigation system for Common Area landscaping, and the establishment of Neighborhood reserve funds as the Board deems proper.

#### 10.8. Amendments to Article X

Except for amendments by Declarant under Section 18.1, this Article 10 may not be amended without the affirmative vote or written consent of Owners of at least two-thirds (2/3) of the Townhome Units and the Declarant.

### **Article XI    Expansion of the Community**

#### 11.1. Expansion by Declarant

Until all property described in Exhibit "B" has been subjected to this Declaration or 10 years after the Recording of this Declaration, whichever is earlier, Declarant reserves the right, but not the obligation, to subject unilaterally to the provisions of this Declaration all or any portion of the real property described in Exhibit "B". Declarant may transfer or assign this right to subject property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "A" or "B" and that Declarant memorializes such transfer by executing a written, Recorded instrument.

Declarant shall subject property by Recording a Supplemental Declaration describing the property being subjected Such Supplemental Declaration shall not require the Members' consent but shall require the consent of the owner of such property, if other than Declarant Any such annexation shall be effective upon the Recording of such Supplemental Declaration unless otherwise provided therein.

#### 11.2. Expansion by the Association.

After Declarant's right to subject unilaterally additional property expires as provided in Section 11.1, the Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing 67% of the total votes in the Association, and the consent of Declarant during the Declarant Control Period.

The Association shall subject such property by Recording a Supplemental Declaration describing the property being subjected Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, by the owner of the subjected property, and by Declarant, if Declarant's consent is required. Any such subjection of property shall be effective upon Recording unless otherwise provided therein.

#### 11.3. Withdrawal of Property.

So long as Declarant owns property described in Exhibit "A" or "B," Declarant reserves the unilateral right to amend this Declaration to withdraw any portion of the Community from the coverage of this Declaration whether originally described in Exhibit "A" or added by Supplemental Declaration, however, the withdrawal of any property shall require the consent of the affected property owner(s), if other than Declarant If the property is Common Area, the Association shall consent to such withdrawal upon Declarant's request.

#### 11.4 Additional Covenants and Easements

So long as Declarant owns any property described in Exhibit "A" or "B," Declarant unilaterally may subject any portion of the property submitted to this Declaration to additional covenants and easements Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the subjection of the property and shall require the written consent of the owner(s) of such property, if other than Declarant Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property

#### 11.5 Effect of Filing Supplemental Declaration

A Supplemental Declaration shall be effective upon Recording unless such Supplemental Declaration specifies otherwise On the effective date of the Supplemental Declaration, any additional

property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

#### 11.6. Amendment

This Article shall not be amended without Declarant's prior written consent so long as Declarant owns any property described in Exhibit "A" or "B".

### **Article XII Development Rights and Protections**

#### 12.1. Reasonable Rights To Develop

Declarant and/or builders may be undertaking the work of constructing improvements to and upon the Community, including Units. The completion of such construction and the sale or other disposal of the Units is essential to the establishment and welfare of the Peninsula as a residential community. Therefore, so long as Declarant owns any property described in Exhibit "A" or "B" for development or sale, nothing in this Declaration or the other Governing Documents shall be understood or construed to;

(a) prevent Declarant, builders, or their contractors or subcontractors from doing in the Peninsula or on any Unit whatever is reasonably necessary or advisable in connection with the commencement or completion of the above-described work,

(b) prevent Declarant or its representatives from erecting, constructing, and maintaining on any part of the Peninsula such structures as reasonably may be necessary for the conduct of its business of completing the work, establishing the Peninsula as a residential community, and disposing of the Units by sale, lease, or otherwise;

(c) prevent Declarant from maintaining such signs and conducting such activities on any part of the Peninsula owned by Declarant or the Association as Declarant may deem to be reasonably necessary for the sale, lease, or disposition of Units, or

(d) prevent Declarant from placing and utilizing on Units or other property which it owns one or more mobile trailers or temporary structures as sales offices or for construction activities.

Nothing in this Section shall give Declarant the right to damage any Unit or other property not owned by Declarant.

#### 12.2 Marketing and Sales Activities

So long as Declarant owns any property described in Exhibit "A" or "B," Declarant and builders authorized by Declarant may construct, relocate, maintain, and carry on upon any Unit

Declarant owns or upon portions of the Common Area, such facilities and activities as may be reasonably required, convenient, or incidental to the construction, marketing, or sale of Units, in Declarant's sole opinion. Such facilities and activities may include, without limitation, business offices, signs, model units, and sales offices. There shall be no limit on the number or size of such facilities Declarant and authorized builders shall have easements for access to and use of such facilities Declarant reserves the right to remove any personal property used in connection with its activities on the Common Area upon termination of its rights under this Section.

#### 12.3. Construction of Improvements.

So long as Declarant owns any property described in Exhibit "A" or "B," Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Every Person that acquires any interest in the Peninsula acknowledges that the Peninsula is a planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to changes in the Master Plan.

#### 12.4 Right To Approve Additional Covenants

So long as Declarant owns any property described in Exhibit "A" or "B," no Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent Any instrument Recorded without such consent shall be void and of no force and effect unless Declarant subsequently consents in a Recorded instrument.

#### 12.5. Right To Transfer or Assign Declarant Rights

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; however, the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless Declarant executes a written, Recorded instrument The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in ins Declaration where Declarant does not intend to transfer such right in its entirety In such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

#### 12.6 Exclusive Rights To Use Name of Development

No Person shall use the name "the Peninsula" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "the Peninsula" in printed or promotional matter where such term is used solely to specify that particular

property is located within the Peninsula, and the Association shall be entitled to use the words "the Peninsula" in its name

#### 12.7 Right to Approve Changes in Community Standards.

So long as Declarant owns property described in Exhibit "A" or "B," no amendment to or modification of any Rules and Regulations or Architectural Guidelines shall be effective without Declarant's prior written approval.

#### 12.8 Easement to Inspect and Right to Correct.

(a) Easement. Declarant reserves for itself and such other Persons as it may designate perpetual non-exclusive easements throughout the Peninsula to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, or correcting any portion of the Peninsula, including Units and the Area of Common Responsibility. Declarant shall have the right to redesign or correct any part of the Peninsula, including Units and the Area of Common Responsibility.

(b) Right of Entry. Entry onto a Unit shall be after reasonable notice, except in an emergency. Entry into a structure on a Unit shall be only after Declarant notifies the Unit's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Unit to perform such activities.

(c) Damage. Declarant shall promptly repair any damage to a Unit or the Area of Common Responsibility resulting from the exercise of the easement or right of entry described in subsections (a) and (b) of this Section at its own expense. The exercise of these easements shall not unreasonably interfere with the use of any Unit and entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

#### 12.9 Neighborhoods.

Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, as long as it has the right unilaterally to annex property, to establish separately developed residential Neighborhoods, recreational areas, and amenity areas, or some, all, or none of these, within the Community, to designate Limited Common Area for the exclusive use of one or more, but less than all Neighborhoods. Every Unit situated within a designated Neighborhood may be subjected to additional covenants, conditions, restrictions, and additional assessments for services provided to Units within such designated Neighborhood. Such additional covenants may be set forth in this Declaration of a Supplemental Declaration.

Any Neighborhood may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the

Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be as a Neighborhood assessment.

### **Article XIII Easements**

#### **13.1 Easements in Common Area**

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to

- (a) The Governing Documents and any other applicable covenants,
- (b) Any restrictions or limitations contained in any deed conveying an interest in such property to the Association, and
- (c) The Board's right to
  - (i) adopt and enforce rules regulating use and enjoyment of the Common Area,
  - (ii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration, and
  - (iii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Sections 16.2 and 17.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

#### **13.2 Easements of Encroachment**

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment

occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### 13.3 Easements To Serve Additional Property

So long as Declarant owns any property described in Exhibit "A" or "B," Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area, including all private roads, for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

So long as Declarant owns any property described in Exhibit "A" or "B," Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees and their agents, employees, designees, invitees, and guests, an easement over the Common Area for the purposes of enjoyment, use, access, and development of property located adjacent to Common Area and owned by Declarant, its successors, or assigns, whether or not such property is made subject to this Declaration This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

### 13.4 Easements for Maintenance, Emergency, and Enforcement

Declarant grants to the Association easements over the Peninsula as necessary to enable the Association to fulfill its maintenance responsibilities under Section 6.1 and Article 10 Specifically, the Association shall have a right of entry upon and easement of access through every Unit, but not through a structure, for the purpose of maintaining any property or improvement for which the Association has maintenance responsibility. The Association also shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

### 13.5. Easements for Pond and Wetland Maintenance and Flood Water

During the Declarant Control Period, Declarant reserves for itself, its successors, assigns, and designees, and grants to the Association and its successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility, (b) construct, maintain, and repair structures and equipment used for retaining water, and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees

shall have an access easement over and across any of the Peninsula abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

So long as Declarant owns any property described in Exhibit "A" or "B," Declarant further reserves for itself, its successors, assigns, and designees, and grants to the Association and its successors, assigns, and designees in perpetuity, a nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water and wetlands within the Peninsula, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Peninsula, (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility, and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

No Person shall exercise an easement pursuant to this Section in violation of, or for any purpose which violates, local, state, or federal laws or regulations.

#### 13.6. Easements for Irrigation System.

So long as Declarant owns any property described in Exhibit "A" or "B," Declarant reserves for itself, its successors, assigns, and designees, and grants to the Association and its successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon every Unit and the Common Area to install, operate, maintain, and replace irrigation systems or portions thereof; including irrigation ditches, head gates, and siphons. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of the Peninsula abutting or containing irrigation systems to (the extent reasonably necessary to exercise their rights under this Section. Notwithstanding the above, Unit Owners are responsible for maintaining irrigation systems exclusively serving their Unit.

#### 13.7. Easement for Utilities and Community Systems

Declarant reserves to itself and grants to the Association and all utility providers, perpetual nonexclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary to:

- (a) install utilities and infrastructure to serve the Community, and drainage systems,
- (b) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above, and
- (c) access and read utility meters.

## **Article XIV Dispute Resolution and Limitation on Litigation**

### **14.1 Consensus for Association Litigation.**

Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of Members representing at least 75% of the total votes of the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens), (b) the collection of assessments, (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. Prior to the Association or any Member commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect at the Peninsula or any improvement constructed upon the Peninsula, Declarant shall have the right to meet in good faith and discuss the subject of the proceeding with the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of the Peninsula, including any improvement as to which a defect is alleged. In addition, the Association or the Member shall notify the builder who constructed such improvement prior to retaining any other expert witness or for other litigation purposes.

### **14.2. Alternative Method for Resolving Disputes.**

Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any builder within the Peninsula, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Peninsula, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Sections 14.3 ("Claims") using the procedures set forth in Section 14.4.

### **14.3. Claims**

Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Peninsula (other than matters of aesthetic judgment under Article V, which shall not be subject to review) shall be subject to the provisions of Section 14.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.4;

(a) any suit by the Association against any Bound Party to enforce the provisions of Article IX,

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III, Article IV, and Article V,

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents,

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.4(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.4.

#### 14.4 Mandatory Procedures

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim,

(ii) the legal basis of the Claim (i e , the specific authority out of which the Claim arises),

(iii) Claimant's proposed remedy, and

(iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under an independent agency providing dispute resolution services in Charleston County or surrounding areas.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; however, nothing herein shall release or discharge Respondent from any liability to any Person other than (he Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within five days of the Termination of Mediation, the Claimant shall make a final written demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants' original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the rules of arbitration contained in Exhibit "E" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim, however, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This subsection (c) is an agreement to arbitrate and is specifically enforceable under any applicable arbitration laws of the State of South Carolina. The arbitration award ("Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the South Carolina laws.

14.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 14.5(b), each Party shall bear its own costs, including attorneys' fees; and each Party shall share equally all charges rendered by the mediator; and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award that is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award that is equal to or less favorable to Claimant than any Respondents' Settlement Offer shall award such Respondent its Post Mediation Costs.

14.6. Enforcement of Resolution

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 14.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 14.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

**Article XV Mortgagee Provisions**

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

15.1. Notices of Action.

An institutional holder, insurer, or guarantor of a First Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an ("Eligible Holder")), shall be entitled to timely written notice of;

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

(b) any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days;

(c) any lapse, cancellation, or material modification of any insurance policy the Association maintains, or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders

#### 15.2. Other Provisions for First Lien Holders.

To the extent not inconsistent with South Carolina law:

(a) any restoration or repair of the Peninsula after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless Eligible Holders representing at least 50% of the votes of Units subject to Mortgages held by Eligible Holders elect otherwise; and

(b) termination of the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders representing at least 50% of the votes of Units subject to Mortgages held by Eligible Holders.

#### 15.3. No Priority

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

#### 15.4. Notice to Association

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

#### 15.5 Failure of Mortgagee To Respond

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

#### 15.6. Construction of Article XV

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

### **Article XVI Changes in Common Area**

#### 16.1. Condemnation.

If a Unit or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Area shall be evenly allocated. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total votes in the Association and of Declarant, during the Declarant Control Period) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining Common Area to the extent available, unless within 60 days after such taking Declarant, during the Declarant Control Period, and Members representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 8.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### 16.2 Transfer, Partition, or Encumbrance of Common Area

(a) Except as this Declaration otherwise specifically provides, the Common Area shall not be judicially partitioned or subdivided into Units, nor shall the ownership of the Common Area be

otherwise divided or encumbered in any manner after conveyance to the Association, except upon the approval of Members representing at least 80% of the total votes in the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant during the Declarant Control Period.

(b) The Association shall have the authority, subject to approval of Members representing a majority of the total votes in the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant, during the Declarant Control Period, to transfer portions of the Common Area and improvements thereon to appropriate governmental entities or tax-exempt organizations for the maintenance, operation, and preservation thereof; provided, any such transfer shall not relieve such Common Area from the rights and benefits of the Association and the Members as provided in this Declaration and shall otherwise be subject to the provisions of this Declaration.

## **Article XVII Miscellaneous**

### **17.1 HUD/VA Approval**

Until the termination of the Declarant Control Period, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance, or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

### **17.2. Actions Requiring Owner Approval**

If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs insures or guarantees the Mortgage on any Unit, then, during the Declarant Control Period, the following actions shall require the prior approval of Members representing not less than 67% of the total votes in the Association and the consent of Declarant merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B", and dedication, conveyance, or mortgaging of Common Area Notwithstanding anything to the contrary in Section 16.2 or this Section, the Association may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area without the membership's approval.

### **17.3 Amendment.**

This Declaration may be amended unilaterally at any time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule

or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Units subject to this Declaration, however, any such amendment shall not adversely affect title to any Unit unless such Unit's Owner consents in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Owner(s)

In addition, this Declaration may be amended for so long as Declarant owns any property in the Community or has the right to annex additional property, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds of the Units. If Declarant no longer owns any property in the Community and no longer has the right to annex additional property, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds of the Units

#### 17.4. Validity and Effective Date of Amendment.

No amendment may remove, revoke, or modify any Declarant right or privilege without Declarant's written consent (or the assignee of such right or privilege).

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

Any amendment shall become effective upon Recording, unless it specifies a later effective date. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted, in no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

#### 17.5 Exhibits

Exhibit "A," "B," and "E" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by this reference and may be amended in accordance with Articles IV or this Article. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

**DECLARANT: D.R. Horton, Inc., a Delaware corporation**

Clifton G. Rickard  
Witness (1)

By: Susan Brock  
Its: Assistant Secretary

J.C. Bishop  
Witness (2)  
Cynthia M. Rogers

**STATE OF SOUTH CAROLINA**

**COUNTY OF BERKELEY**

PERSONALLY appeared before me (1) Clifton G Rickard, who, being duly sworn, says that he saw the corporate seal of and made the oath that he saw the within-named, D.R. Horton, Inc., the Grantor, by its duly authorized officer, Susan Brock as Assistant Secretary, sign and seal and, as the act and deed of said corporation, deliver the within instrument, and that he with (2) J.C. Bishop, the other witness named above, witnessed the execution thereof.

Clifton G. Rickard  
Witness (1)

Sworn to before me this 12th day  
of December, 2002:  
Cynthia M. Rogers  
Notary Public for South Carolina

My Commission Expires:  
October 31, 2006

[NOTARY SEAL]

**EXHIBIT "A"**

**Land Initially Submitted**

## **EXHIBIT "B"**

### **Land Subject to Annexation**

Any and all real property lying and being within five miles from any boundary of the property described in Exhibit "A".

## EXHIBIT "C"

### Initial Rules and Regulations

The following restrictions shall apply to all of the Peninsula until such time as they are amended, modified, repealed, or limited pursuant to Article IV of the Declaration.

1. General. The Peninsula shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for Declarant to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Association, and business offices for Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within the Peninsula unless expressly authorized by, and then subject to such conditions as the Board may impose:

(a) Parking any vehicles on streets or thoroughfares within the Community or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages; however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;

(b) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats (the combined number of dogs and cats not to exceed three), or other usual and common household pets may be permitted in a Unit, however, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units, shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity that violates local, state, or federal laws or regulations, provided, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity (including, without limitation, barking dogs) which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Dumping grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Peninsula, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers. Such containers shall be either screened from view or kept inside, except as reasonably necessary for garbage pick ups;

(l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right, provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Units it owns;

(n) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within the Peninsula, except that fishing from the shore shall be permitted with appropriate licenses and Declarant, its successors, and assigns, shall be permitted and shall have the exclusive right and easement to draw water from lakes, ponds, and streams within the Peninsula for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams, or other bodies of water within or adjacent to the Peninsula;

(o) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or

floating time schedule over a period of years, except that Declarant and its assigns may operate such a program;

(p) Discharge of firearms, provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(r) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as; (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit, (ii) the business activity conforms to all zoning requirements for the Peninsula, (iii) the business activity does not involve door-to-door solicitation of residents of the Peninsula; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Peninsula which is noticeably greater than that which is typical of Units in which no business activity is being conducted, and (v) the business activity is consistent with the residential character of the community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents within the Peninsula, as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (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.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Peninsula or its use of any Units which it owns within the Peninsula.

(s) Capturing, trapping, or killing of wildlife within the Peninsula, except in circumstances posing an imminent threat to the safety of persons using the Peninsula;

(t) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Peninsula;

(u) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article V;

(v) Operation of motorized vehicles on pathways or trails maintained by the Association;

(w) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article V of the Declaration. This shall include, without limitation, landscaped or grassed areas, signs, basketball hoops, swing sets, and similar sports and play equipment; clotheslines, garbage cans, woodpiles, in-ground swimming pools, docks, piers, and similar structures, and hedges, walls, dog runs, animal pens, or fences of any kind Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Unit with mulch or stone, and

(x) Use of exterior decorative lights, including holiday displays, with a light bulb color other than white Furthermore, if a holiday display creates a significantly increased traffic flow within the Community, the Unit's Owner or occupant responsible for such display shall remove it upon request of me Board If the Owner or occupant does not remove such display within a reasonable time, the Board may remove the display.

3. Prohibited Conditions. The following shall be prohibited within the Peninsula:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Peninsula;

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair,

(c) Installation of any sprinkler or irrigation systems or wells of any type, other than those initially installed by Declarant or a Declarant approved builder, which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Peninsula, except that Declarant and the Association shall have the right to draw water from such sources,

(d) Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Peninsula, and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter, (ii) satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement, or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted; however, any such Permitted Device must be placed in the least conspicuous location on the Unit (generally being the rear yard) at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property or is screened

from the view of adjacent Units in a manner consistent with the Community-Wide Standard and the Architectural Guidelines, and

(e) Installation of exterior decorative items, including but not limited to statuary, fountains but not including flags.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument All leases shall be in writing. The Board may require a minimum lease term, however, in no case shall such term be shorter than six months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease The Owner must make available to the lessee copies of the Governing Document.

**EXHIBIT "D"**

**BY-LAWS**

**OF**

**THE PENINSULA COMMUNITY ASSOCIATION, INC.**

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**BY-LAWS**  
**OF**  
**THE PENINSULA COMMUNITY ASSOCIATION, INC.**

**Article I Name, Principal Office, and Definitions**

1.1. Name.

The name of the corporation is the Peninsula Community Association, Inc. ("Association").

1.2. Principal Office.

The Association's principal office shall be located in Charleston County, South Carolina. The Association may have such other offices, either within or outside the state of South Carolina, as the Board of Directors may determine or as the Association's affairs require.

1.3. Definitions

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for the Peninsula Recorded in the Office of the Register of Deeds of Charleston County, South Carolina, as it may be amended ("Declaration"), unless the context indicates otherwise.

**Article II Association: Membership, Meetings, Quorum, Voting, Proxies**

2.1 Membership.

The Association shall have one class of membership as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2 Place of Meetings

Association meetings shall be held at the Association's principal office or at such other suitable place convenient to the Members as the Board may designate.

2.3 Annual Meetings.

The first Association meeting, whether a regular or special meeting, shall be held not later than one year after the first sale of a Unit within the Community to an Owner other than a builder or

developer purchasing primarily for development or resale in the ordinary course of such Person's business Meetings shall be of the Members Subsequent regular annual meetings shall be held each year at a time set by the Board.

#### 2.4 Special Meetings

The President may call special meetings In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least 25% of the Members (the consent of the Declarant shall not be required) The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof No business shall be transacted at a special meeting, except as stated in the notice.

#### 2.5 Notice of Meetings

It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Unit (as shown in the Association's records) a notice of each annual or special meeting of the Association stating the time and place where it is to be held and in the notice of a special meeting, the purpose thereof If an Owner wishes notice to be given at an address other than the Unit, the Owner shall designate by notice in writing to the Secretary such other address The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice Notices for annual and special meetings shall be served at least 30 days but not more than 60 days in advance of the such meeting.

If mailed, the notice of a meeting shall be deemed to be delivered upon the earliest of (a) the date received, (b) five days after its deposit in the United States mail, as evidenced by its postmark, if mailed with first class postage affixed, (c) the date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and signed by or on behalf of the addressee or (d) thirty days after its deposit in the United States mail, as evidenced by the postmark, if mailed with other than first class, registered, or certified postage affixed.

#### 2.6 Waiver of Notice

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

#### 2.7 Adjournment of Meetings

If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to

a time not less than five nor more than 30 days from the time the original meeting was called At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.8 Voting.

The Declaration shall set forth the Members' voting rights; such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies

At all meetings of Members, each Member may vote in person or by proxy All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Unit, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of 11 months from the date of the proxy.

2.10. Majority.

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

2.11 Quorum.

The presence, in person or by proxy, of 25% of the total eligible Association vote shall constitute a quorum at all meetings of the Association The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum Any amendment to this Section shall comply with the provisions of Section 33-31-1023 of the South Carolina Nonprofit Corporation Code.

2.12 Conduct of Meetings.

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

2.13 Action Without a Meeting.

Any action to be taken at a meeting of the Members, or which may be taken at a meeting of the Members, may be taken without a meeting if written consents setting forth the action so taken are signed by Members holding at least 80% of the Association's voting power. Action taken without a meeting shall be effective on the date that the last consent is executed or, if required, the date Declarant consents.

to the action unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.

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

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

##### 3.1 Governing Body: Composition.

A board of directors, each of whom shall have one equal vote, shall govern the Association's affairs Except with respect to directors Declarant appoints during the Declarant Control Period, the directors shall be Members or residents; however, no Owner and resident representing the same Unit may serve on the Board at the same time A "resident" shall be any person 18 years of age or older whose principal residence is a Unit within the Community. In the case of a Member which is not an individual, any officer, director, partner, member or manager of a limited liability company, or trust officer of such Member shall be eligible to serve as a director unless a written notice to the Association signed by such Member specifies otherwise, however, no Member may have more than one such representative on the Board at a time, except in the case of directors Declarant appoints.

##### 3.2 Number of Directors

The Board shall consist of three to seven directors, as provided m Section 3 4 below 3.3. Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to directors Declarant appoints during the Declarant Control Period, nominations for election to the Board shall be made by a "Nominating Committee." The Nominating Committee shall consist of a Chairman, who shall be a Board member, and three or more Members or representatives of Members. The Board shall appoint the Nominating Committee not less man 30 days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election The Nominating Committee shall make as many nominations fir election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 34 below. Nominations shall also be permitted from the floor. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Owner may cast the entire vote assigned to his Unit for each position to be filled There shall be no cumulative voting. That number of candidates equal to the

number of positions to be filled receiving the greatest number of votes shall be elected Directors may be elected to serve any number of consecutive terms.

### 3.4 Election and Term of Office

Owner-elected directors shall be elected and hold office as follows:

(a) After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting to be held at which Members shall elect three directors.

(b) Thereafter, directors shall be elected at the Association's annual meeting. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

At the special meeting in which the Owners initially elect directors, two directors shall be elected to two-year terms and one director shall be elected to a one-year term. At the expiration of the initial term of office of each respective Owner-elected director, a successor shall be elected to serve for a term of two years. The directors shall hold office until their respective successors shall have been elected by the Association.

After the Declarant's right to appoint directors and officers terminates, upon a vote to approve by two-thirds of the Members, the number of directors may be expanded to any odd number up to and including seven directors.

### 3.5 Removal of Directors and Vacancies.

At any regular or special meeting of the Association duly called, any one or more of the directors may be removed, with or without cause, by a vote of a majority of the Members and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Members shall be given at least ten days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than 30 days may be removed by a majority vote of the remaining directors at a meeting.

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

This Section shall not apply to directors Declarant appoints. Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director it has appointed.

## **B. Meetings**

### **3.6. Organizational Meetings**

The Board shall hold an organizational meeting within 10 days following each annual Association meeting at such time and place the Board shall fix

### **3.7. Regular Meetings.**

The Board may hold regular meetings at such time and place a majority of the directors shall determine, but the Board shall hold at least four such meetings during each fiscal year with at least one per quarter. The Board shall give notice of the time and place of a regular meeting to directors not less than six days prior to the meeting; provided, the Board need not give notice of a meeting to any director who has signed a waiver of notice or a written consent to holding the meeting.

### **3.8. Special Meetings.**

The Board may hold special meetings when called by written notice signed by the President, the Vice President, or any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) 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 (d) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least six business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be delivered or communicated at least 72 hours before the time set for the meeting. Notices of such meetings shall also be delivered to the Members contemporaneously with the directors' notices.

### **3.9. Waiver of Notice**

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

### 3.10. Telephonic Participation in Meetings

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

### 3.11. Quorum of Board of Directors

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless the By-Laws or the Declaration specifically provide otherwise. A meeting at which a quorum is present initially may continue to transact business, notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact without further notice any business which it might have transacted at the original meeting. Any amendments to this Section shall comply with the provisions of Section 33-31-1024 of the South Carolina Nonprofit Corporation Code.

### 3.12. Compensation.

Directors shall not receive any compensation from the Association for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director makes his or her interest known to the Board prior to entering into such contract and a majority of the Board, excluding the interested director, approves such contract.

### 3.13. Conduct of Meetings.

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

### 3.14. Open Meetings

Subject to the provisions of Section 3.15, all Board meetings shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests permission for that person to speak. In such case, the President may limit the time such person may speak. Notwithstanding the above, the President may adjourn any Board meeting and reconvene

in executive session, and may exclude persons other than directors Only the following matters are open for discussion in executive session.

- (a) matters pertaining to Association employees or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the Association,
- (b) consultation with legal counsel regarding disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client,
- (c) investigative proceedings concerning possible or actual criminal conduct,
- (d) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and
- (e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

### 3.15. Action Without a Formal Meeting

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

## **C. Powers and Duties**

### 3.16. Powers.

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

### 3.17 Duties.

The Board's duties shall include, without limitation.

- (a) causing to be prepared and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Neighborhood Expenses;
- (b) levying and collecting such assessments from the Owners,

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility and entering into agreements with adjacent property owners to allocate maintenance responsibilities and costs of certain public rights-of-way and other property within or adjacent to the Community;

(d) designating, hiring, and dismissing the personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association, provided, any reserve fund may be deposited, in the directors' business judgment, in depositories other than banks;

(f) making and amending Rules and Regulations in accordance with the Declaration,

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents,

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in Section 8.5 of the Declaration,

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association,

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4,

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(o) indemnifying an Association director, officer, or committee member, or former Association director, officer, or committee member to the extent such indemnity is required by South Carolina law, the Articles of Incorporation, or the Declaration, and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

### 3.18 Right of Declarant to Disapprove Actions

So long as Declarant has the right unilaterally to annex property under Section 101 of the Declaration, Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in Declarant's sole judgment, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, interfere with the development or construction of any portion of the Community, or diminish the level of services the Association provides.

(a) The Association shall give Declarant written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.7, 3.8, 3.9, and 3.10 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting, and

(b) The Association shall give Declarant the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

Declarant, its representatives, or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. Declarant, acting through any officer, director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of the Board, the Association, or any committee. Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### 3.19 Management.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. Declarant or an affiliate of Declarant may be employed as managing agent or manager.

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

### 3.20 Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise;

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

### 3.21 Borrowing

The Association shall have the power to borrow money for any legal purpose; however, the Board shall obtain Member approval in the same manner provided in Section 9.2 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year. No Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least 80% of the total vote in the Association.

### 3.22. Right to Contract

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with residential or nonresidential owners' associations within and outside the Community, however, any common management agreement shall require the Board's consent.

### 3.23. Enforcement.

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

(a) Notice. Prior to imposition of certain sanctions requiring notice under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed, however, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XV of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

### 3.24. Board Standards

While conducting the Association's business affairs, the Board shall be protected by the business judgment rule. The business judgment rule protects a director appointed by Declarant from personal liability so long as the director, (a) serves in a manner the director believes to be in the best interests of the Association and the Members, or (b) serves in good faith. The business judgment rule protects a director not appointed by Declarant from liability for actions taken or omissions made in the performance of such director's duties, except for liability for wanton and willful acts or omissions.

In fulfilling its governance responsibilities, the Board's actions shall be governed and tested by the rule of reasonableness. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

The burden of proof in any challenge to an action or inaction by a director shall be on the party asserting liability.

The operational standards of the Board and any committee the Board appoints shall be the requirements set forth in the Governing Documents or the minimum standards which Declarant, the Board, and the Architectural Review Committee may establish. Such standard shall, in all cases, meet or exceed the standards set by Declarant and the Board during the Declarant Control Period. Operational standards may evolve as the needs and demands of the Community change.

### 3.25 Board Training Seminar

Each director is encouraged to complete a board training seminar within such director's first six months of directorship. Such seminar shall educate the directors about their responsibilities and duties. The seminar may be in live, video or audio tape, or other format.

## **Article IV Officers**

### 4.1 Officers

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members, other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two or more offices, except the offices of President and Secretary. Moreover, the Secretary shall be responsible for preparing minutes of all directors' and Members' meetings and for authenticating records of the corporation.

### 4.2 Election and Term of Office

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

### 4.3 Removal and Vacancies

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

### 4.4 Powers and Duties

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Secretary shall prepare, execute, certify, and Record amendments to the Declaration as provided in Section 17.2 of the Declaration. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

#### 4.5. Resignation

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

#### 4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other Association instruments shall be executed by at least two officers or by such other person or persons as a Board resolution may designate.

#### 4.7. Compensation

Officers' compensation shall be subject to the same limitations as directors' compensation under Section 3.12.

### **Article V Committees**

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

### **Article VI Miscellaneous**

#### 6.1 Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

#### 6.2. Parliamentary Rules.

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

#### 6.3 Conflicts.

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

#### 6.4 Books and Records

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

(b) Rules for Inspection. The Board shall establish rules with respect to;

- (i) notice to be given to the custodian of the records,
- (ii) hours and days of the week when such an inspection may be made, and
- (iii) payment of the cost of reproducing copies of documents requested.

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

#### 6.5 Notices

Unless the Declaration or these By-Laws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid;

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member, or

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

#### 6.6 Amendment.

(a) By Declarant. During the Declarant Control Period, Declarant unilaterally may amend these By-Laws for any purpose. Thereafter, Declarant or the Board unilaterally may amend these By-

Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; provided, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total vote in the Association, and the consent of Declarant, so long as Declarant has the right unilaterally to annex property pursuant to Section 11.1 of the Declaration. In addition, the approval requirements set forth in Article XVII of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) FHA/VA Approval of Amendments. The U.S. Department of Veterans Affairs (if it is guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such Mortgages) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such Mortgages) shall have the right to veto amendments to these By-Laws for as long as Declarant has the right to appoint and remove the Association's directors and officers.

(d) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation, unless the amendment specifies a later effective date. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws. The Secretary shall prepare, execute, certify, and Record amendments to these By-Laws.

No amendment may remove, revoke, or modify any of Declarant's rights or privileges without its written consent so long as Declarant has the right unilaterally to annex property pursuant to Section 11.1 of the Declaration.

**CERTIFICATION**

I, the undersigned, do hereby certify

That I am the duly elected and acting Secretary of the Peninsula Community Association, Inc, a South Carolina corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this \_\_\_\_ day of \_\_\_\_\_, 2002

\_\_\_\_\_[SEAL]  
Secretary

## **EXHIBIT "E"**

### **Rules of Arbitration**

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice")
2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows' all the Claimants shall agree upon one Party Appointed Arbitrator, and all the Respondents shall agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three arbitrators
3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Association Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.
5. The Appointed Neutral or Neutral, as the case may be, ("Arbitrator") shall fix the date, time, and place for the hearing. The place of the hearing shall be within the Peninsula unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

8. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as he or she deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

9. If the Arbitrator decides that he or she has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in his or her own discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

10. No formal discovery shall be conducted in the absence of order of the Arbitrator or express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when he or she is satisfied the record is complete.

12. There will be no post hearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, signed by the Arbitrator, and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one arbitrator, all decisions of the Panel, including the Award, shall be by majority vote. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.



Article 10.3 is deleted in its entirety and the following substituted in its place:

10.3 Townhome Unit. The vertical boundaries of each Townhome Unit are as shown on the applicable subdivision plat recorded in the office of the Register of Deeds in Berkeley County, South Carolina. The Declarant anticipates that each plot of land constituting a Townhome Unit will consist of land under the footprint of the Townhome Unit. Accordingly, Townhome Unit Owners will not own the front or back yards, if any. All property within the Townhome Neighborhood not a part of a Townhome Unit, including the front yards of Townhome Units, will be Common Area maintained by the Association.

Subparagraph (vi) of Section 10.4 is hereby amended by deleting the words "front end" therefrom.

Subparagraph (vii) of Section 10.4 is hereby deleted in its entirety and subparagraph (viii) renumbered accordingly. Any and all references in Article X to irrigation system or equipment are hereby deleted as well.

THIS AMENDMENT shall govern all property now or hereafter subject to the Declaration. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, as it may be amended or supplemented from time to time, which shall run with the title to the land and shall be binding upon all persons having any right, title, or interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized representatives, this the 30<sup>th</sup> day of June, 2003.

DECLARANT: D.R. HORTON, INC., a Delaware corporation

WITNESSES:

Amanda T. Foy  
Diane Bell

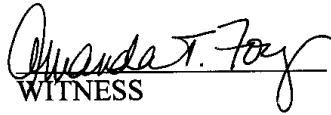
By: Susan L. Brock  
Name: Susan L. Brock  
Title: Division CFO

Attest: Clifton G. Rickard  
Name: CLIFTON G. RICKARD  
Title: V.P. ACQUISITION AND DEV.

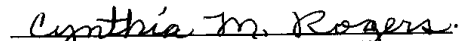
[ACKNOWLEDGEMENT ON NEXT PAGE]

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

PERSONALLY appeared before me Amanda T. Foy, who being duly sworn, says that she saw the corporate seal of and made the oath that she saw the within named D.R. Horton, Inc., the Declarant, by its duly authorized representative, Susan L. Brock, as Division CFO, sign and seal and as the act and deed of said corporation, deliver the within instrument, and that she with Diane Bell, the other witness named above, witnessed the execution thereof.

  
WITNESS

Sworn to before me this 30<sup>th</sup> day of  
June, 2003;

  
Notary Public for South Carolina

My Commission expires: 10-31-06

FILED, RECORDED, INDEXED  
09/19/2003 03:25:00PM  
Rec Fee: 11.00 St Fee: 0.00  
Co Fee: 0.00 Pages: 3  
Issued to: DODDS & HENNESSY  
Register of Deeds Berkeley Co., SC  
Cynthia B. Forte

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

AMENDED AND RESTATED AMENDMENT  
to the Declaration of Covenants, Conditions and Restrictions for  
The Peninsula

THIS RESTATED AMENDMENT TO THE COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR THE PENINSULA ("Amendment") IS MADE AS OF  
THE DATE SET FORTH BELOW BY D.R..Horton, Inc., a Delaware corporation  
("Declarant").

WHEREAS, on December 12, 2002, Declarant caused to be recorded that certain  
Declaration of Covenants Conditions, and Restrictions for The Peninsula ("Declaration")  
in Deed Book 03043, Page 00001, et seq., in the Office of the Register of Deeds of  
Berkeley County, South Carolina; and

WHEREAS, pursuant to Section 10.2 of the Declaration, as long as rights of  
existing Owners are not adversely affected, the Declarant may unilaterally amend or  
restate the Declaration to modify the provisions of Article X or impose additional  
covenants and restrictions on Townhome Neighborhoods; and

WHEREAS, Declarant desires to amend and reinstate the Amendment recorded in  
Book 03410, Page 00292, filed July 8, 2003 in the Register of Deeds of Berkeley County  
to reflect a change in Owners' lot size and maintenance responsibilities as they apply to  
Townhome Units and delete any reference to the lawn maintenance; and

WHEREAS, the rights of existing Owners are not adversely affected by the  
changes;

NOW, THEREFORE, Declarant hereby Restates and Amends Article X as  
follows:

10.3 is deleted in its entirety and in its place is substituted the following so that  
10.3 now stated as follows:

10.3 Townhome Unit. The community association reserves an easement for landscaping and maintenance for the front and rear yards running from the exterior of the buildings to the outer boundary of front and back yards. The Community Association shall have the right, but not the obligation to plant vegetation and maintain the vegetation inside the easement described above. The dimensions and the ownership of each lot is as shown on the plat entitled "Final Subdivision Plat of Phases 1 Peninsula Townhomes" and recorded in the RMC Office for Berkeley County, SC in Plat Book P, Page 329A.

THIS RESTATED AMENDMENT shall govern all property now or here after subject to the Declaration. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, as it may be amended or supplemented from time to time, which shall run with the title to the land and shall be binding upon all persons having any right, title, or interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

INWITNESS WHEREOF, Declarant has caused this Restated Amendment to executed by its duly authorized representatives, this 16<sup>th</sup> day of September 2003

DECLARANT: D.R. HORTON, INC., a Delaware corporation

WITNESSES:

Diane Bell  
Cheryl T. Lee

By: Susan L. Brock  
Name: Susan L. Brock  
Title: Division CFO

Attest: Clifton G. Rickard  
Name: CLIFTON G. RICKARD  
Title: VP ACQUISITION & DEV  
COASTAL CAROLINA DIVISION



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY ) **AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE PENINSULA**

WHEREAS, D.R. HORTON, INC., a Delaware corporation ("Declarant") impressed certain restrictions on the subdivision known as The Peninsula; said Declaration of Covenants, Conditions, and Restrictions for The Peninsula ("Restrictions") having been recorded December 12, 2002, in the Register of Deeds Office for Berkeley County in Book 3043 at page 001; and

WHEREAS, Exhibit "C", Section 2 (w) of said Restrictions provides that no construction or modification of any thing on the outside portion of any Unit shall be allowed unless the Architectural Review Committee ("ARC") approves in writing; and

WHEREAS, Exhibit "A" was not completed at the time of recording; and

WHEREAS, Section 17.3 of said Restrictions grants the Declarant the right to unilaterally amend the Restrictions for any purpose, so long as the amendment does not materially adversely affect the substantive rights of any Owners, nor adversely affect title to any Unit without the consent of the affected Owner; and

WHEREAS, Declarant would now like to modify the Restrictions allowing for the erection of fences without ARC approval and to add the legal description of the property subject to the Restrictions; and

WHEREAS, Declarant wishes to amend the Declaration of Covenants, Conditions and Restrictions as follows:

- 1. Exhibit "C" Section 2 (w) shall be deleted in its entirety and replaced with the following:

Any construction, erection, placement, or modification of any thing, except for fences that comply with the paragraph below, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article V of the Declaration. This shall include, without limitation, landscaped or grassed areas; signs; basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; in-ground swimming pools; docks, piers and similar structures; and hedges, walls dog runs, or animal pens. Under no circumstances

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Issued to: MCNAIR LAW FIRM  
Register of Deeds Berkeley Co., SC  
Cynthia B. Forde

shall the ARC approve the replacement of all or a majority of the grassed area of a Unit with mulch or stone;

Fences may be erected on the rear and side of any Unit, so long as they comply with the following:

- (i) Four (4') foot vinyl or wood fence that is either picket or scalloped and either white, black or Charleston Green in color; or
- (ii) A. For Single Family Homes located in The Peninsula: Six (6') foot Shadowbox or Stockade with Lattice at the top in either white, black or Charleston Green wrought iron or black aluminum material.
  - B. For Townhomes located in The Peninsula: Six (6') foot Shadowbox or Stockade with Lattice at the top made of either vinyl or wood material.

2. Exhibit "A" attached hereto shall replace the incomplete Exhibit "A" attached to the original Restrictions; and

WHEREAS, these amendment to the Restrictions do not materially adversely affect the substantive rights of any Owners, nor adversely affect title to any Unit.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Declarant agrees to modify the Declaration of Covenants, Conditions, and Restrictions for The Peninsula as follows:

1. Exhibit "C" Section 2 (w) shall be deleted in its entirety and replaced with the following:

Any construction, erection, placement, or modification of any thing, except for fences that comply with the paragraph below, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article V of the Declaration. This shall include, without limitation, landscaped or grassed areas; signs; basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; in-ground swimming pools; docks, piers and similar structures; and hedges, walls dog runs, or animal pens. Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Unit with mulch or stone;

Fences may be erected on the rear and side of any Unit, so long as they comply with the following:

- (i) Four (4') foot vinyl or wood fence that is either picket or scalloped and either white, black or Charleston Green in color; or

- (ii) A. For Single Family Homes located in The Peninsula: Six (6') foot Shadowbox or Stockade with Lattice at the top in either white, black or Charleston Green wrought iron or black aluminum material.
- B. For Townhomes located in The Peninsula: Six (6') foot Shadowbox or Stockade with Lattice at the top made of either vinyl or wood material.

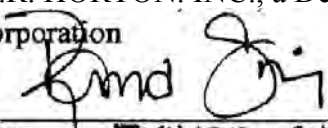
2. Exhibit "A" attached hereto shall replace the incomplete Exhibit "A" attached to the original Restrictions.

3. Except as provided above, the remaining Restrictions set forth in the Declaration of Covenants, Conditions and Restrictions, as amended, for The Peninsula shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant hereby comprises the above Amendment to Declaration of Covenants, Conditions and Restrictions for The Peninsula this 10th day of March, 2004.

IN THE PRESENCE OF:

Cindy Rogers  
Susan Bracl

D.R. HORTON, INC., a Delaware corporation  
  
 BY: RICHARD SHIVELY  
 Its: Div. Mgr.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that the said D.R. HORTON, INC., a Delaware corporation, Richard Shively Division Manager appeared before me this 10th day of March, 2004 and acknowledged the due execution of the foregoing instrument.

SUBSCRIBED to and sworn before me this 10th day of March, 2004.

Abanda Joy  
 Notary Public for South Carolina  
 My Commission Expires: 10/14/09

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

ALL those certain pieces, parcels or lots of land, situate, lying and being in the City of Charleston, Berkeley County, South Carolina, as shown on the plat entitled: "CONDITIONAL/FINAL SUBDIVISION PLAT OF PHASE 1 THE PENINSULA PREPARED FOR D.R. HORTON", prepared by Thomas & Hutton Engineering Co. Co., dated July 23, 2002 and recorded in the ROD Office for Berkley County in Plat Cabinet P, Page 309B and in Plat Cabinet P, Page 310-A.

-AND-

ALL those certain pieces, parcels or lots of land, situate, lying and being in the City of Charleston, Berkeley County, South Carolina, as shown on the plat entitled: "CONDITIONAL/FINAL SUBDIVISION PLAT OF PHASE 1-A PENINSULA COVE DRIVE THE PENINSULA PREPARED FOR D.R. HORTON", prepared by Thomas & Hutton Engineering Co., dated February 3, 2003, and recorded in the ROD Office for Berkeley County in Plat Cabinet Q, Page 12A.

-AND-

ALL those certain pieces, parcels or lots of land, situate, lying and being in the City of Charleston, Berkeley County, South Carolina, as shown on the plat entitled: "CONDITIONAL SUBDIVISION PLAT OF PHASES 1B AND 2 THE PENINSULA PREPARED FOR D.R. HORTON", prepared by Thomas & Hutton Engineering Co., dated February 12, 2003, and recorded in the ROD Office for Berkeley County in Plat Cabinet Q, Page 34-C.

-AND-

ALL those certain pieces, parcels or lots of land, situate, lying and being in the City of Charleston, Berkeley, South Carolina, as shown on the plat entitled: "CONDITIONAL SUBDIVISION PLAT OF PHASE 3 THE PENINSULA PREPARED FOR D.R. HORTON", prepared by Thomas & Hutton Engineering Co., dated February 12,2003, and recorded in the ROD Office for Berkeley in Plat Cabinet Q, Page 15 A.

-AND-

ALL those certain pieces, parcels or lots of land, situate, lying and being in the City of Charleston, Berkeley County, South Carolina, as shown on the plat entitled: "CONDITIONAL/FINAL SUBDIVISION PLAT OF PHASE 4 THE PENINSULA PREPARED FOR D.R. HORTON", prepared by Thomas & Hutton Engineering Co., dated April 24, 2003, and recorded in the ROD Office for Berkeley County in Plat Cabinet Q, Page 82B.

-AND-

ALL those certain pieces, parcels or lots of land, situate, lying and being in the City of Charleston, Berkeley County, South Carolina, as shown on the plat entitled: "FINAL SUBDIVISION PLAT OF PHASE 1 PENINSULA TOWNHOMES PREPARED FOR D.R. HORTON", prepared by Thomas & Hutton Engineering Co., dated August 26, 2002, and recorded in the ROD Office for Berkeley County in Plat Cabinet P, Page 329A.

-AND-

ALL those certain pieces, parcels or lots of land, situate, lying and being in the City of Charleston, Berkeley County, South Carolina, as shown on the plat entitled: "CONDITIONAL/FINAL SUBDIVISION PLAT OF PENINSULA TOWNHOMES PHASE 2 PREPARED FOR D.R. HORTON", prepared by Thomas & Hutton Engineering Co., dated April 29, 2003, and recorded in the ROD Office for Berkeley County in Plat Cabinet Q, Page 84A.

-AND-

ALL those certain pieces, parcels or lots of land, situate, lying and being in the City of Charleston, Berkeley County, South Carolina, as shown on the plat entitled: "CONDITIONAL/FINAL SUBDIVISION PLAT OF PENINSULA TOWNHOMES PHASE 2 PREPARED FOR D.R. HORTON", prepared by Thomas & Hutton Engineering Co., dated April 29, 2003, and recorded in the ROD Office for Berkeley county in Plat Cabinet Q, Page 83B.

BEING a portion of the property conveyed to D.R. Horton, Inc. by deed of Peter O. Lawson-Johnston and The Morgan Guaranty Trust Company of New York, as Trustees of the Trust Created by Article Ninth of the Will of Harry F. Guggenheim, Deceased, and dated April 5, 2001, and recorded April 9, 2001, in the ROD Office for Berkeley County in Book 02211 at Page 00187.

ALSO BEING, a portion of the property conveyed to D.R. Horton, Inc. by deed of Peter O. Lawson-Johnson and JP Morgan Chase Bank, as Trustees of the Trust Created by Article Ninth of the Will of Harry F. Guggenheim, Deceased, and dated April 1, 2003, and recorded May 7, 2003, in the ROD Office for Berkeley County in Book 03292 at Page 00187.

Portion of Parent TMS No.: 262-00-00-008

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY ) **SECOND AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR THE PENINSULA**

WHEREAS, **D.R. HORTON, INC., a Delaware corporation** ("Declarant") impressed certain restrictions on the subdivision known as The Peninsula; said Declaration of Covenants, Conditions, and Restrictions for The Peninsula ("Restrictions") having been recorded December 12, 2002, in the Register of Deeds Office for Berkeley County in Book 3043 at page 001, as amended by Amendment to Declaration of Covenants, Conditions, and Restriction for The Peninsula, dated March 10, 2003 and recorded March 23, 2004 in Book 3895 at Page 224, aforesaid records office, and

WHEREAS, Section 17.3 of said Restrictions grants the Declarant the right to unilaterally amend the Restrictions for any purpose, so long as the amendment does not materially adversely affect the substantive rights of any Owners, nor adversely affect title to any Unit without the consent of the affected Owner, and

WHEREAS, Exhibit "C", Section 2(w) of the Restrictions was amended in the preceding Amendment; and

WHEREAS, Declarant wishes to again amend Exhibit "C", Section 2(w) of the Restrictions as follows, and

WHEREAS, Declarant wishes to amend the Declaration of Covenants, Conditions and Restrictions as follows.

Exhibit "C", Section 2 (w), as amended, shall be deleted in its entirety and replaced with the following:

Any construction, erection, placement, or modification of any thing, permanently; or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article V of the Declaration. This shall include, without limitation, landscaped or grassed areas; signs; basketball hoops, swing sets, and similar sports and play equipment, clotheslines, garbage cans; woodpiles, in-ground swimming pools, docks, piers and similar structures; and hedges, walls dog runs, animal pens, or fences of any kind Under no circumstances shall the ARC approve the

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Register of Deeds Berkeley Co., SC  
Cynthia R. Forke

replacement of all or a majority of the grassed area of a Unit with mulch or stone, and

WHEREAS, this amendment to the Restrictions does not materially adversely affect the substantive rights of any Owners, nor adversely affect title to any Unit.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Declarant agrees to modify the Declaration of Covenants, Conditions, and Restrictions for The Peninsula as follows

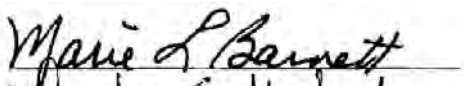
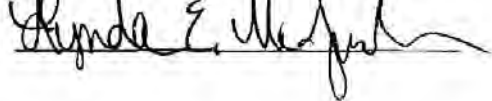
1. Exhibit "C", Section 2 (w), as amended, shall be deleted in its entirety and replaced with the following:

Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article V of the Declaration This shall include, without limitation, landscaped or grassed areas, signs, basketball hoops, swing sets, and similar sports and play equipment, clotheslines, garbage cans, woodpiles, in-ground swimming pools, docks, piers and similar structures, and hedges, walls dog runs, animal pens, or fences of any kind Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Unit with mulch or stone; and

2. Except as provided above, the remaining Restrictions set forth in the Declaration of Covenants, Conditions and Restrictions, as amended, for The Peninsula shall remain in full force and effect

IN WITNESS WHEREOF, the undersigned Declarant hereby comprises the above Amendment to Declaration of Covenants, Conditions and Restrictions for The Peninsula this 26<sup>th</sup> day of April, 2004

IN THE PRESENCE OF:

D R. HORTON, INC , a Delaware corporation

  
BY Richard Or  
Its: DIV. MGR.



THIS DOCUMENT IS BEING RE RECORDED TO CORRECT A RECORDING ERROR. PAGE THREE (3) OF THIS DOCUMENT THAT WAS ORIGINALLY RECORDED WAS THE INCORRECT PAGE THREE (3). THE CORRECT PAGE THREE (3) THAT BELONGS TO THIS DOCUMENT IS ATTACHED HERETO.

STATE OF SOUTH CAROLINA ) THIRD AMENDMENT TO DECLARATION  
 ) OF COVENANTS, CONDITIONS, AND  
COUNTY OF BERKELEY ) RESTRICTIONS FOR PENINSULA  
000008994 Bk:04589 Pg:00339

WHEREAS, **D.R. HORTON, INC., a Delaware corporation** ("Declarant") impressed certain restrictions on the subdivision known as The Peninsula; said Declaration of Covenants, Conditions, and Restrictions for The Peninsula ("Restrictions") having been recorded December 12, 2002, in the Register of Deeds Office for Berkeley County in Book 3043 at page 001, as amended by Amendment to Declaration of Covenants, Conditions, and Restriction for The Peninsula, dated March 10, 2003 and recorded March 23, 2004 in Book 3895 at Page 224, and as further amended by Second Amendment to Declaration of Covenants, Conditions, and Restrictions for The Peninsula, dated April 26, 2004 and recorded May 5, 2004 in Book 3978 at Page 140, aforesaid records office; and

WHEREAS, Section 17.3 of said Restrictions grants the Declarant the right to unilaterally amend the Restrictions for any purpose, so long as the amendment does not materially adversely affect the substantive rights of any Owners, nor adversely affect title to any Unit without the consent of the affected Owner, and

WHEREAS, Declarant wishes to amend Article VIII, Section 5(a), to grant to Owners the right to a written appeal of any deemed violation of the Restrictions before any sanctions are imposed,

WHEREAS, this amendment to the Restrictions does not materially adversely affect the substantive rights of any Owners, nor adversely affect title to any Unit.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Declarant agrees to modify the Declaration of Covenants, Conditions, and Restrictions for The Peninsula as follows:

A. 8.5 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violating the Governing Documents after written notice and a thirty (30) day right for the Owner to make a written appeal to the Board Such sanctions may include, without limitation

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Cynthia B. Forbe

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (In the event that any occupant, guest, or invitee of an Owner violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator, however, if the violator does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Board),

(ii) suspending an Owner's right to vote,

(iii) suspending any services the Association provides to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association,

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation,

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit that violates Article V and to restore the Unit to its previous condition and, upon the Owner's failure to do so, the Board or its designee shall have the right to enter the property, remove the violation, restore the property to substantially the same condition as previously existed, and levy a Specific Assessment against the Owner's Unit in accordance with Section 9.3 Any such action shall not be deemed a trespass,

(vi) without liability to any Person, precluding any contractor, subcontractor, agent employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article V and the Architectural Guidelines from continuing or performing any further activities in the Community, and

(vii) levying a Specific Assessment against an Owner in the manner provided in Section 9.3 to collect any costs the Association incurs in curing any violation, plus a reasonable administrative fee to discourage noncompliance, or to collect any fine that remains unpaid for a period of 10 days or more

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of complying with the procedures set forth in the By-Laws

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), and

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both

In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs the Association incurs against the Unit and the Owner as a Specific Assessment pursuant to Section 9.3 Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action

the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

B. Except as provided above, the remaining Restrictions set forth in the Declaration of Covenants, Conditions and Restrictions, as amended, for The Farm at Wescott shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant hereby comprises the above Amendment to Declaration of Covenants, Conditions and Restrictions for The Farm at Wescott this 6<sup>th</sup> day of January, 2005.

IN THE PRESENCE OF:

*Marie L Barnett*  
*[Signature]*

D.R. HORTON, INC., a Delaware corporation

*[Signature]*  
BY: RICARDO SHIVELY  
Its: CITY MGR.

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF DORCHESTER )

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that the said D.R. HORTON, INC., a Delaware corporation, by Richard Shively CITY MANAGER appeared before me this 6<sup>th</sup> day of January, 2005 and acknowledged the due execution of the foregoing instrument.

SUBSCRIBED to and sworn before me this 6<sup>th</sup> day of January, 2005.

*Amanda T. Foltz*  
Notary Public for South Carolina  
My Commission Expires: 10-14-09

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