

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR THE COMMONS

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THIS DECLARATION, made this 13th day of September, 2002, by TANNER EAST COMPANY, LLC, a South Carolina limited liability company, having an office at 487 Winn Way, Ste. 100, Decatur, Georgia 30030, hereinafter referred to as the "Declarant".

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Issued to: ELLIS LAWHORNE & SIMS PA  
Register of Deeds Berkeley Co., SC  
Cynthia B. Forte

WITNESSETH:

WHEREAS, Declarant is the owner of a certain piece, parcel, or tract of land being delineated and shown on a plat entitled, "subdivision plat showing Tanner Plantation 'Phase I-A, (The Commons) Tract E, a 15.543 acre tract of land, property of Tanner East Company, LLC., located in the City of Hannahan, Berkeley County, South Carolina " prepared by Trico Engineering Consultants, Inc. dated September 5, 2002 and recorded in the ROD Office for Berkeley County ("Plat") on September 12, 2002 in Plat Book P at Page 270-B; and,

WHEREAS, Declarant intends to develop said property and any other real property which it may hereafter incorporate as additional phases of The Commons; and,

WHEREAS, Declarant desires to provide for: (i) the ownership and maintenance of certain common areas created and/or, established within the confines of The Commons; and, (ii) the preservation of the values of the properties of The Commons; and, (iii) the rendering of community services; and, (iv) a vehicle for the administration and the enforcement of certain covenants and restrictions applicable to The Commons at the time Declarant transfers the common areas to the The Commons Homeowners Association, Incorporated; and,

WHEREAS, Declarant will cause to be incorporated, at or before the termination and/or conclusion of the development of The Commons, under the laws of the State of South Carolina a nonprofit corporation, known as THE COMMONS AT TANNER PLANTATION HOMEOWNERS ASSOCIATION, INC., for the purpose of exercising the functions aforesaid and which are hereinafter more fully set forth herewith; and,

WHEREAS, Declarant declares that the covenants contained herein shall be covenants running with the land and shall apply to the lands described in the Plat and such additional lands owned by Declarant as may be by incorporating this Declaration by specific reference. The Declarant reserves in each instance the right to add additional restrictive covenants with respect to land owned by it and covered hereby and to limit the application to this Declaration to lands owned by it and subjected hereto in the future.

NOW, THEREFORE, Declarant declares that the real property described in the Plat be subjected to this Declaration, is, and shall be, held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (hereinafter some-times referred to as the "Covenants") hereinafter set forth.

ARTICLE I  
DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following

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meanings:

(a) "Association" shall mean and refer to The Commons at Tanner Plantation Homeowners Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

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(b) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded to the Association for the use and benefit of its Members. The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners, Residents and their guests (to the extent permitted by the Board of Directors of the Association) subject to fee schedules and operating guidelines.

(c) "Declarant" shall mean and refer to Tanner East Company, LLC as well as its successors and assigns, if the Declarant shall make and express conveyance of its rights as developer hereunder to such successor or assign.

(d) "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Restrictions and Easements of The Commons, as the same may be amended, renewed or extended from time to time in the manner provided herein, which shall be filed for.

(e) "The Commons" shall mean and refer to the Lots on the property in Berkeley County, South Carolina, described in the Plat and the Common Properties.

(f) "Lot" shall mean and refer to those portions of the Property upon which Declarant has intended for construction of or has been constructed a Patio Home or Townhome for sale, use, and occupancy as a single-family residential dwelling in conformity with the terms of this Declaration as such are shown on the Plat, and with regard to Lots on the Additional Property, on plats which will be filed of record by Declarant at the appropriate time.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as defined in Article 3.

(h) "Owner" shall mean and refer to the Owner (including Declarant) as shown by the real estate records in the Office of the Register of Deeds (ROD) of Berkeley County, South Carolina, whether it be one or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Lot located within The Commons but, notwithstanding any applicable theory of a mortgage or deed to secure debt, shall not mean or refer to the mortgagee or holder of a deed to secure debt, its successors or assigns, unless and until such mortgagee or holder of a deed to secure debt has acquired title pursuant to foreclosure or by a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the Office of the Register of Deeds of Berkeley County, South Carolina, a long-term contract of sale covering any Lot, the Owner of such Lot shall remain the Owner until fee simple title to the Lot has been transferred to the purchaser. A long-term contract of sale shall be one in which (i) the purchaser is required to make payments for the Lot for a period extending beyond nine (9) months from the date of the contract, (ii) the purchaser does not receive title to the property until such payments are made and (iii) the purchaser is given the use of said property.

(i) "Property," unless the context shall otherwise require, shall mean and refer to that tract or parcel of land described in the Plat, together with all improvements thereon.

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(j) "Resident" shall mean and refer to each Owner and Tenant of a Lot and Patio Home or Townhouse together with the members of his family living in such Patio Home or Townhouse.

(k) "Tenant" shall mean and refer to the lessee under a written agreement for the rent of a Lot and Patio Home or Townhouse in The Commons.

(l) "Patio Home", "Townhouse" or "Family Dwelling Unit" shall mean and refer to the improvements constructed on each Lot.

(m) "Master Association" shall mean and refer to Tanner Plantation Master Association of which all lots in the Commons Subdivision are held, sold and conveyed subject to.

NOTWITHSTANDING THE ESTABLISHMENT OF PATIO HOMES OR TOWNHOMES OF THE COMMONS HOMEOWNERS ASSOCIATION, INC. AND THE SUBMISSION OF THE PROPERTY TO THE TERMS AND CONDITIONS OF THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE COMMONS IS NOT A CONDOMINIUM AS DEFINED IN THE HORIZONTAL PROPERTY ACT, CODE OF LAWS OF SOUTH CAROLINA, 1976 SECTION 27-31-10, ET SEQ.

## ARTICLE II PLAN OF DEVELOPMENT

1. Plan of Development of Property. The property shall be developed as a Patio Home/ Townhouse community and the Declarant shall develop and construct Patio Homes and/or Townhomes as single-family residential dwellings in conformity with the terms of this Declaration. The Property shall also include paved parking areas, drives, roads, utility systems, and other improvements or easements serving the Lots. The Lots shall be restricted exclusively to single-family residential use in accordance with the provisions of this Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot primarily for the purpose of sale, to make improvements and changes to all Common Areas and to all Lots owned by Declarant (other than changes to the location of the boundaries of the Lots), including, without limitation, (i) addition to and realignment of parking spaces, (ii) installation of any utility systems and facilities, (iii) installation of security and refuse facilities, and (iv) work related to the exteriors and roofs of Patio Homes.

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

1. Membership. Every person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of a Lot shall be the sole qualification for such membership. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the

contrary, no Owner, regardless of whether title to a Lot is vested in more than one Owner, shall have more than one membership or one vote per Lot.

2. Classes. The Association shall have two classes of voting membership:

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Class A. Class A Members shall be all Owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Owners shall file with the Secretary of the Association an instrument in writing signed by all such Owners designating one Owner (or in the case of a corporation, one of its officers) to cast the vote which is attributable to such Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to two (2) votes for each Lot it owns as shown on the Plat. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) the sale to the Owners of Seventy-Five (75%) Percent of the Lots; or
- (b) when Declarant elects by notice to Association in writing to terminate its Class B membership.

3. Governing Body. The Association shall be governed by a Board of Directors consisting of five (5) Members. Subject to the provisions of Article III, Section 6, the election of the Board of Directors shall be by the Members as provided in the By-Laws as set forth in Exhibit A, a copy which is attached hereto and incorporated herein by reference.

4. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The first time a meeting of the members of the Association is called to vote on a particular action proposed to be taken by the Association, the presence at the meeting of Members or proxies entitled to cast fifty percent (50%) of the total vote of the membership shall constitute a quorum. In the event the required quorum is not present at any such meeting, a second meeting may be called, subject to the giving of proper notice, and the presence of twenty-five percent (25%) of the total vote of the membership shall constitute a quorum for such second meeting. Any such second meeting must be held within sixty (60) days of the first meeting when the required quorum was not present. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements for such "duly called meeting" which may be established by the By-Laws of the Association. For the purpose of this section, "proper notice" shall be deemed to be given to each Member not less than ten (10) days nor more than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered.

5. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing.

6. Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAYS OF THE ASSOCIATION, Declarant hereby retains the right to reduce the number of Directors on

the Board of Directors of the Association, to appoint and remove any Member or Members of the Board of Directors of the Association and any officer or officers of the Association until such time as the first of the following events shall have occurred: (i) the expiration of ten (10) years from the date of the recording of this Declaration or (ii) the surrender of such right by Declarant evidenced by an express amendment hereto recorded in the public records of Berkeley County, South Carolina. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to reduce the number of Directors on the Board of Directors of the Association, to appoint and remove directors and officers of the Association in accordance with the foregoing. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession. Notwithstanding the provisions of this Section, Declarant, at Declarant's sole option, may hold the election of the new Board of Directors by direct ballot of the Owners. Declarant shall prepare a ballot which shall include those nominations provided by the Owners, and deliver to each Owner a ballot. Each Owner shall be responsible for marking the ballot and returning it to the Declarant, who will tabulate the ballots and report the results to the Owners, at which time the Board of Directors shall be deemed elected. Any management contract or any other contract or lease executed by or on behalf of the Association during the period of Declarant's right to control the Association shall be subject to cancellation and termination at any time during the twelve (12) months next immediately following the expiration of such period of Declarant's control by the affirmative vote of the Owners to whom a majority of the votes in the Association appertain, unless the Owners by a like majority shall have expressly ratified and approved the same.

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#### ARTICLE IV FUNCTIONS OF ASSOCIATION

1. Ownership and Maintenance of Common Properties. The Association shall be authorized to own and maintain the Common Properties. The Association shall pay any ad valorem taxes on the Common Properties. Each Owner shall be responsible for the payment of all ad valorem taxes on his Lot and Patio Home. The Association shall have the authority to promulgate and enforce rules and regulations regarding The Commons, and fine Members for violations of the rules and regulations, which fines, if unpaid, shall become a continuing lien on the Lot, and the right, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and facilities thereon; however, no portion of the Common Properties may be mortgaged or conveyed without the consent of two thirds (2/3) of the Class A Members; and

2. Required Services. The Association shall be required to provide the following services:

- (a) Repair, replacement and maintenance of the Common Properties and all

(b) Taking any and all actions necessary to enforce all covenants and restrictions affecting The Commons and to perform all of the functions and duties delegated to the Association in any covenants or restrictions applicable to The Commons.

(c) Providing administrative services, including, but not limited to, legal, accounting and financial, and communication services informing Owners of activities and giving required notices incident to carrying out the functions of the Association.

(d) Review of and approval or disapproval of plans and specifications for (i) work to any Patio Home or (ii) landscaping on any Lot, all as provided for in the Declaration.

(e) Maintenance of liability insurance for the Association in such amounts as shall be determined by the Board of Directors to protect the Association against claims for which the Board of Directors determine should be covered, including, without limitation, insurance for the officers and directors in connection with their management of the Association.

(f) Enforce the obligation of each Owner to maintain and keep in good repair the exterior of such Owner's Patio Home(s), Townhome(s) and such Owner's Lot (s).

(g) Maintenance of the Common Properties.

(h) Collection on any payment of all assessments due from each lot owner under the Master Association.

(i) Replacement of roofs when such need for replacement results from normal wear and tear due to aging.

(j) Maintenance and upkeep of the landscaping in the front and side yard of each Lot.

(k) To purchase hazard insurance covering the improvements located on the Common Properties and any items of personal property which are apart of the Common Properties.

**3. Discretionary Services.** The Association shall be authorized, but not required, to provide the following services:

(a) Provide police protection and security to The Commons including, the employment of police and security guards.

(b) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document.

(c) Provide garbage and trash collection to each Patio Home with The Commons.

**4. Obligation of the Association.** The Association shall be obligated to carry out those services specified in Section 2 of this Article, but shall not be obligated to carry out or offer any of the functions and services specified in Section 3 of this Article. The functions and services listed in Section 3 to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced or may be changed in nature (i.e., form required to discretionary or vice versa) at any time upon the affirmative vote of a simple majority of the voting rights of those voting at a duly held meeting of Members together with the consent of Declarant, so long as Declarant owns a Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property, or any portion thereof, to the Development.

**5. Pledge of Revenues.** The Board of Directors of the Association shall have the power and authority to borrow funds for the benefit of the Association in

performing its authorized functions and to pledge the revenues of the Association as security for such loans.

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ARTICLE V  
PROPERTY RIGHTS

1. Owner's Easements of Enjoyment in Common Properties. Subject to the provisions of these covenants, the rules and regulations established from time to time by the Association, and any fees or charges established by the Association, every Owner, Resident and Tenant shall have an easement of ingress and egress over all paved portions of the Common Properties and of use and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot, Patio Home, and/or Townhome.

2. Title to Common Properties. Declarant shall convey to the Association, at no cost to the Association, by limited warranty deed, that real property designated as Common Properties on the final, recorded plat of The Commons. Such conveyance shall be subject to all matters of record. Upon such conveyance, the Association shall immediately become responsible for all maintenance of such Common Properties.

3. Extent of Owner's Easement. The easements of ingress, egress, use and enjoyment created hereby shall be subject to the following:

(a) The right of the Association to suspend the rights and easements of use of any Owner, resident or tenant of any lot for any period during which the payment of any assessment made by the Association against such Lot remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Owner's obligation to pay the assessment.

(b) The right of the Association by action of its Board of Directors to dedicate or transfer to any public or private utility, or municipality any part of the Common Properties.

(c) The rights and easements of the Association set forth in Section 4, below.

(d) The rights and easements of the Declarant set forth in Section 5, below.

(e) The right of the Association to grant easements and to dedicate or transfer fee simple title to all or any part of the Common Properties, including leasehold interests, to any public or private concern for such purposes and subject to such conditions as may be agreed to by the Association; provided that no such dedication or transfer of fee simple title shall be effective unless authorized by the affirmative vote of a simple majority of the votes cast at a duly called meeting of the Association and by Declarant so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution, together with a certificate of the results of the vote taken thereon, shall be made by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association and such certificate together with a certificate, executed by Declarant, if such consent is required, shall be annexed to any instrument of dedication or transfer affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

4. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including, but

not limited to, any manager employed by the Association, to enter upon the Property (but not inside a Patio Home) or any portion thereof in the performance of their respective duties which specifically includes the right to maintain and upkeep the landscaping in the front and side yard of each Lot. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the owner or Occupant of the Lot, Patio Home, Townhome or other structure or improvement directly affected thereby. In that connection, the Board of Directors has the power to grant and accept easements upon, over, under, and across all of the Common Areas for ingress, egress, installing, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and electrical, gas, telephone, water and sewer lines and landscaping; provided, however, that for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. In addition, the Board of Directors has the power to grant and accept such easements upon, over, under, and across all of the Common Properties as may be reasonably necessary or desirable for the improvement of any portion of the Property; provided, however, that for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer to erect and maintain upon the Property the necessary poles and other necessary equipment.

#### 5. Easements for the Declarant.

(a) Construction. During the period that Declarant owns any Lot primarily for the purpose of sale or owns any interest in any portion of the Additional Property, whether or not a part of the development, Declarant and its duly authorized representative, agents, and employees shall have a transferable right and easement on, over, through, under and across the Common Properties for the purpose of constructing Patio Homes and/or Townhomes on the Lots and making such other improvements to the Property as are contemplated by this Declaration and to the Additional Property as Declarant, in its sole discretion, desires, including, without limitation, any improvements or changes permitted and described by Article IV hereof, and for the purposes of installing, replacing, and maintaining all Patio Homes, Townhomes and other improvements within the development, as well as utilities servicing the property or the Additional Property or any portion thereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

(b) Sales Office. Notwithstanding any provisions or restrictions herein on the contrary, Declarant and its duly authorized agents, representatives, and employees shall have an easement for the maintenance of signs, a sales office, a construction office, a business office, and model Patio Homes on the Property, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots or the Additional Property, for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

6. Leases of Lots. Any lease agreement between an Owner and Tenant for the lease of such Owner's residence on its Lot shall provide that the terms of the lease shall be

subject in all respects to the provisions of the Declaration, the Articles of Incorporation and By-Laws of the Association, and any rules and regulations promulgated by the Association. The lease shall also provide that failure to comply with the terms of such documents shall be default under the terms of the lease. All leases of Lots shall be in writing and a copy of the executed lease must be provided to the Board.

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## ARTICLE VI COVENANTS FOR ASSESSMENTS

**1. Creation of the Lien and Personal Obligations of Assessments.** Except as set forth elsewhere in the Declaration, Declarant covenants and each Owner of any Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (1) regular annual assessments or charges; and (2) special assessments or charges for the purposes set forth in this Article. Regular annual assessments and special assessments are to be fixed, established and collected from time to time as hereinafter provided. The regular annual assessment and special assessments together with such interest thereon and costs of collection therefor, including reasonable attorney fees, as hereinafter provided, shall be a charge and continuing lien on the Lot and Patio Home and/or Townhome thereon against which each such assessment is made. Each such assessment, together with assessed interest thereon and all costs of collection, as hereinafter provided, shall also be the personal obligation of the Owner of such Lot at the time when the assessment first becomes due and payable. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Common Properties or abandonment of his Lot and Patio Home.

**2. Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence upon the date of purchase of the Lot and Patio Home or Townhome by the Owner. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. Declarant shall not be responsible for assessments on Lots owned by Declarant. At Declarant's option, lots owned by Palmettos Tradiational Homes, LLC or other builders which are not occupied as residences may not be responsible for assessments.

At least thirty (30) days in advance of each annual assessment period, the Board shall fix the amount of the annual assessment and promptly thereafter the Board shall cause written notice thereof to be sent to every Owner subject thereto. In the event the Board shall fail to fix the amount of annual assessment as described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. The due dates shall be established by the Board.

**3. Purpose of Regular Annual Assessment.** The regular annual assessments shall be levied by the Board of Directors of the Association, shall be payable monthly and shall be used exclusively for the improvement, maintenance, repair and enhancement of the Common Properties, and, to provide the required services as set forth in Article IV, Section 2 hereof and to provide so many of the discretionary services set forth in Article IV, Section 3 as the Board of Directors may elect to provide, and payment of the Master Association assessments.

4. Special Assessments. In addition to the annual regular assessments authorized by Section 3 hereof, the Board of Directors of the Association may levy special assessments against Lots for the following purposes to the extent any regular annual assessment is insufficient:

- (a) Repair or replacement of any paved areas located on the Common Properties.
- (b) Repair, replacement and maintenance of the walls and landscaping on the Common Properties.
- (c) To provide for the necessary facilities and equipment to offer the services authorized herein;
- (d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.
- (e) Replacement of the roofs of each Patio Home and/or Townhome constructed on a Lot.

Before any special assessment is levied by the Association, it must receive the assent of a simple majority of the votes cast at a duly held meeting of the Association. In mailing out the notice of such meeting, the Association shall include in the notice one statement from those Directors favoring the special assessment and one statement from the Directors opposing the special assessment (if any), containing the reasons for those Directors' support and opposition for the assessment. Neither statement shall exceed two (2) pages in length.

In the event any Owner shall fail to fulfill his/her/its obligations under Article VI hereof, and the Association shall fulfill any of such obligations for such Owner, the Association shall be entitled to specially assess such Owner, without the requirement of a vote, for all costs incurred by the Association in performing such service.

5. Reserve Funds. The Association may establish reserve funds from its regular annual assessments to be held in reserve in an interest-bearing account or investments as a reserve for (a) major rehabilitation, major repairs, or major maintenance; and (b) for emergency and other repairs required as a result of storm, flood, wind, natural disaster or other casualty loss.

6. Certificate of Payment. The Association shall upon demand at any time furnish to any Owner liable for any regular or special assessment, a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

7. Effect of Non-payment of Assessment: The Personal Obligation of the Owner: The Lien: Remedies of Association. If the regular annual assessment or any special assessment is not paid by an Owner on or before its past-due date, then such assessment shall become delinquent, shall bear interest from the past due date until paid at the rate of the lesser of (i) fifteen percent (15%) per annum, or (ii) the highest rate permitted by law, and shall automatically and immediately (together with interest thereon as provided herein and all costs of collection, including attorney's fee) become a charge and continuing lien on the Lot, Patio Home, and/or Townhome against which each such delinquent assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, Tenant, successors and assigns.

If the assessment is not paid within thirty (30) days after the past-due date, the Association may, at its election, bring an action to foreclose its lien on the property or bring an action at law against the Owner personally. If a delinquent assessment is put in the hands of an attorney-at-law for collection, there shall be added to the amount of such assessment all costs of collection, including, but not limited to, fifteen percent (15%) of

the amount of the delinquent assessment and all interest thereon as reasonable attorney's fees. No owner may waive or otherwise escape liability for the assessment provided herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein. Mortgagees shall not be required to collect assessments. 000080783 Bk:02915 Pg:00275

8. Subordination of the Lien to Deeds to Secure Debt. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first mortgage, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which becomes due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage.

9. Annual Statements. The president, treasurer or such other officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than \$250.00. Such officer shall furnish to each Member proof of the Association who may request in writing, a copy of such statement within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

10. Annual Budget. The Board of Directors shall prepare and make available to all Members, at least sixty (60) days prior to the first day of each fiscal year, a budget outlining anticipated receipts and expenses for the upcoming fiscal year. The Financial Books of the Association shall be available for inspection by all Members at all reasonable times.

11. Uniform Assessment. All assessments made under this Declaration shall be equal among Lots except for those Lots owned by the Declarant, and at the option of the Declarant, those lots owned by Palmetto Traditional Homes, LLC or other Builders that are not occupied as residences.

12. Assessment for Roof Replacement. In order to insure that the Association will have sufficient reserve funds to replace the roofs of the Patio Homes and Townhomes located on the Lots, a reserve fund will be established pursuant to Article VI, Section 5. The funding of the reserve shall be provided by the Owners whereby a portion of the regular annual assessment shall, which portion shall be determined by the Board, be deposited and held in reserve until such time as the roofs need replacing.

13. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of South Carolina shall be exempt from the assessments created herein. All property owned by the Declarant, at the Declarant's election, shall be exempt for the assessments created herein. At the Declarant's election, Lots owned by

Palmetto Traditional Homes, LLC or other licensed builders (provided such lots are not being occupied as residences) shall be exempt from annual assessments until sold. Otherwise, no land or improvements devoted to dwelling use shall be exempt from said assessments.

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14. Capitalization Of Association. Upon acquisition of record title to a Lot by the first Owner other than Declarant or Palmetto Traditional Homes, LLC or other builders (provided such builder owned Lots are not being occupied as residences), 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-fourth of the annual assessment in affect during the year the closing of the Lot occurs. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be used by the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration.

## ARTICLE VII ARCHITECTURAL CONTROL

1. Improvements, Changes and Alterations. No building, fence, wall or other structure or planting or landscaping (including, but not limited to, the removing, planting or placing of trees, shrubbery, bushes, grass or ground cover, or the construction, installation, location or removal of walls, fences, fountains, bird baths, pools, ponds, streams, gardens, decks, or patios) shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein including without limitation any plantings or landscape be made until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board, or at Declarant's option, an architectural committee composed of three (3) or more representatives appointed by the Declarant (hereinafter referred to as the "Architectural Control Committee"). Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties previously approved by the appropriate governmental entity.

### 2. Procedures.

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Board or the Architectural Control Committee which shall evaluate such plans and specifications in light of the purpose of this Article.

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specifications of any of the features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been

(c) Neither Declarant, nor the Association, nor any other member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. **FURTHER, NEITHER DECLARANT, NOR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE LIABLE IN DAMAGES TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE ARCHITECTURAL CONTROL COMMITTEE PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE ARCHITECTURAL CONTROL COMMITTEE FOR APPROVAL AGREES, BY SUBMISSION OF SUCH PLAN AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ASSOCIATION, ITS BOARD MEMBER OR OFFICERS, OR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE, TO RECOVER ANY SUCH DAMAGES, AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.**

(d) During construction, any employee or agent of the Architectural Control Committee may, after reasonable notice, at any reasonable time, enter upon any Lot and structure thereon for the purpose of ascertaining compliance with the provisions of this Declaration, and neither the Architectural Control Committee, nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

### **3. Violations.**

If any structure shall be erected, placed, maintained or altered upon any Lot, other than in accordance with plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article. If, in the opinion of the Declarant, or the Board of Directors of the Association upon recommendation of the Architectural Control Committee, such violation shall have occurred, the Board of Directors shall provide written notice to the Owner of such Lot by certified mail, setting forth the nature of the violation and the specific action required to remedy the violation. Any such required remedial action shall be consistent with guidelines then maintained by the Architectural Control Committee. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Board of Directors of the Association shall have the right to proceed at law or in equity for the recovery of damages, or for injunctive relief, or both.

ARTICLE VIII  
USE RESTRICTIONS

1. Purpose. The primary purpose of this Declaration and the foremost consideration in the origin of same has been the creation of a fee simple patio home and townhome development which is aesthetically pleasing and functionally convenient.

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2. Residential Use. Each Lot and the Patio Home or Townhome constructed thereon shall be used for residential purposes exclusively. No business or commercial activity of any nature shall be maintained in any Patio Home or Townhome, including by way of illustration and not by way of limitation, telephone answering services, manufacturer's representatives, interior decoration services and such other activities as do not directly constitute or necessitate the transfer of goods or merchandise from, in or about a Patio Home or Townhome. However, until such time as Declarant has sold all of the Lots in The Commons, it may use any Patio Home or Townhome which it owns as a model unit or as a sales office.

3. Permitted Structures. No structure shall be erected, placed or permitted to remain on any Lot other than the following:

- (a) One single-family Patio Home or Townhome to be used as a dwelling.
- (b) Landscaping structures of the type compatible with the Patio Homes and Townhomes built in The Commons including, but not limited to, garden walls, walks, fences, driveways and parking areas.

4. Landscaping. If trees or shrubbery located on such portion of a Lot should die, the Association shall be responsible for its removal (unless the Owner shall have insurance proceeds available for such removal, in which event the Owner shall be responsible for its removal), but the Owner shall, at his expense, replace dead trees or shrubbery with reasonably similar trees or shrubbery; provided, however, that any such replacements may be of a lesser age. The Association shall be responsible for the maintenance and upkeep of the landscaping in the front and side yard of each Lot.

5. Antennas. No radio or television transmission or reception towers, antennas, satellite dishes or disks shall be erected on any structure or within the property within the property. Notwithstanding the above, satellite dishes or disks which are not greater than eighteen (18") inches in diameter may be installed on Lots provided they are adequately screened from the streets and adjoining Lots.

6. Air Conditioning Units and Other Objects Located Outside of Patio Home or Townhome No Owner shall install or permit to be installed window or roof-top air conditioning units or similar machines or objects outside of the Owner's Patio Home or Townhome or which protrude through the walls, windows or roof of a Patio Home or Townhome.

1. 7. No Signs. Except for the rights given Declarant under the Declaration, no signs, advertisements, or notices shall be erected, exhibited, maintained, inscribed, painted or affixed on any portion of a Lot or on any Patio Home or Townhome by anyone including, but not limited to, an Owner, a realtor, a contractor, or subcontractor, except with the prior written consent of the Association or except as may be required by legal proceedings. If such consent is granted, the Association shall have the right to restrict the size, color and content of such signs. Residential property identification and like signs not exceeding a combined total of more than one (1) square foot may be exhibited and

maintained without the written consent of the Association. Likewise, one sign of not more than five (5) square feet advertising a Lot for sale may be exhibited or maintained during the period for which it is for sale without the consent of the Association.

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8. No Burning. No outside burning of wood, leaves, trash, garbage or other refuse shall be permitted on any Lot.

9. Pets. Except as in this section permitted, no animals, livestock or poultry of any kind shall be kept, raised or bred on any Lot; provided, however, that an Owner may be permitted to keep no more than two (2) normal household pets (i.e., dogs or cats) on his Lot. In the event that pets are kept on a Lot, such pets shall not be kept, maintained or bred for any commercial purposes and must be secured by a leash or lead at any time they are permitted outside a Patio Home or Townhome. In no event shall an Owner maintain on a Lot any pet which causes distress to other Owners by barking, howling, whining, biting, scratching or damaging

10. No Outbuildings or Temporary Structures. No mobile home, tent, barn, shed, pet pen, pet house, above ground pool, basketball goal, or other similar outbuilding or structure shall be placed on any Lot at any time, either temporarily or permanently. No structure of a temporary character shall be placed upon any Lot at any time.

11. Parking of Vehicles. No vehicle of any type (including, but not limited to, boats, trailers, trucks, buses, motor homes, recreational vehicles, motor scooters, go carts, motor bikes and campers) other than conventional automobiles and pick-up trucks not used for commercial use, shall be parked or maintained on any Lot except as the Association shall permit in an area specially designated for such purpose. None of the aforesaid vehicles shall be parked or stored overnight on the streets or other Lots located in The Commons, nor shall they be used as a living area while located on the Property nor shall any of the aforesaid vehicles be repaired or serviced on any portion of the property. Each Lot shall be entitled to no less than two (2) assigned parking spaces.

12. Activities Causing Disorderly Conditions. The pursuit of hobbies or other activities which might lead to disorderly, unsightly or unkept conditions shall not be pursued or undertaken on any Lot.

13. Disturbing Others. Each Owner shall be responsible for and shall regulate the occupancy and use of such Owner's Lot and Patio Home or Townhome so as to not unreasonably disturb other residents of The Commons or to interfere unreasonably with the peace and enjoyment of the other Lots, Patio Homes and Townhomes by the Owners thereof. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done on a lot which creates an annoyance or nuisance to the Owners or residents within The Commons. No Owner shall allow any disturbing noises on such Owner's Lot to interfere with the rights, comforts or conveniences of other owners. No Owner shall permit any musical instrument to be played or any phonograph, television, radio or other sound-making equipment to be operated on such Owner's Lot at a volume which disturbs or annoys other residents of The Commons.

14. Rubbish and Trash. No portion of a Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage or other waste shall be stored only temporarily awaiting pickup and must be kept in adequate sanitary containers. All equipment for the storage or disposal of trash, garbage or other waste shall be kept in a clean and sanitary condition.

15. Interior Window Coverings. All interior window coverings or treatments as viewed from the exterior shall be white or off-white in color. No bed sheets, towels, newspaper or any other product not specifically designed for window treatment application shall be used for temporary or permanent interior window coverings or treatments.

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16. Mailboxes. No mailbox shall be erected or installed on any Lot unless the Owner shall have received prior written approval from the Declarant as to the design, style and location of the mailbox.

17. Trees: Screening. Trees which have a diameter in excess of six (6") inches measured two (2') feet above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior written approval of the Architectural Control Committee of the landscape plan. Garbage cans and equipment shall be screened to conceal them from view of neighboring Lots and streets. Swingsets may be installed on the Lots only after receiving the prior written approval of the Architectural Control Committee. No clotheslines shall be permitted on the Lots.

18. Fences. All fences must be approved pursuant to Article VII, Section 1 prior to installation. Chain link fences are not allowed.

#### ARTICLE IX INSURANCE AND RECONSTRUCTION

1. Owner Must Provide Insurance of Patio Home and Townhome. Each Owner shall, at his own expense, insure his Patio Home or Townhome and all other insurable improvements on his Lot in an amount not less than the then current maximum insurable replacement value thereof. Such coverage shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsements and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water damage.

2. Reconstruction or Repair of Damaged Patio Homes and Townhomes. If any Patio Home or Townhome shall be damaged by casualty, the Owner of such Patio Home or Townhome shall promptly reconstruct or repair it so as to restore such Patio Home or Townhome nearly as possible to its condition prior to suffering the damage. All such reconstruction and repair work shall be done in accordance with plans and specifications therefor, approved by the Association. Encroachments upon or in favor of Patio Homes, Townhomes or Lots, which may be necessary for or created as a result of such reconstruction or repair, shall not constitute a claim or basis of a proceeding or action by the Owner on whose Patio Home, Townhome or Lot such encroachment exists, provided that such reconstruction or repair is done substantially in accordance with the plans and specifications approved by the Association or as the building was originally constructed. A number of Patio Homes or Townhomes constructed on the Lots appear from the exterior to have a common party wall with the Patio Home(s) or Townhomes constructed on contiguous Lots. However, all Patio Homes or Townhomes have been constructed with separate exterior stud walls where there appears to be a party wall. The boundary line between these Lots runs along the air space between any such Patio Homes or Townhomes. This air space has been concealed on the exterior by covering it with facie

boards which are common to both Patio Homes or Townhomes. The exterior of the two walls on either side of this small air space are unfinished so that if one of the Patio Homes or Townhomes is destroyed and not rebuilt, an unsightly condition will exist. Therefore, if a structure is destroyed in whole or in part, and the Owner thereof elects not to rebuild, such Owner shall be responsible for the cost of finishing the exterior of those walls on contiguous Patio Homes or Townhomes which are unfinished and which are exposed to view as the result of such destruction. The finish placed on these exterior walls shall be subject to the approval of the Declarant and shall be compatible with the finish of the other visible exterior walls of the structure. In addition, the Owner of the damaged or destroyed structure shall be responsible for the cost of immediately weatherproofing the exposed unfinished walls of contiguous Patio Homes or Townhomes, if necessary.

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**3. Decision Not to Reconstruct.** An Owner shall not be required to reconstruct a damaged Patio Home or Townhome only if 80% or more of the Patio Homes or Townhomes in The Commons are rendered uninhabitable by such damage.

#### ARTICLE X MAINTENANCE

**1. Owner's Responsibility.** Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of a Lot, together with all portions of the Patio Home or Townhome, and other improvements thereon shall be the responsibility of the Owner of such Lot. The responsibility of each Owner shall include the maintenance, repair, and replacement of all siding, exterior doors, fixtures, equipment, and appliances (including, without limitation, the heating and air-conditioning system for his Patio Home or Townhome) and all chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus which are deemed to be a part of his Lot. The responsibility of the Owner shall also include the maintenance, repair, and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window screens, and all screens or glass-enclosed porches, balconies, or decks which are a part of the Patio Home or Townhome. Each owner shall maintain his roof in a good state of repair except as provided for in Article IV, Section 2.

In addition, each Owner shall be responsible for replacing his roof as such need is caused by a hazard which is normally covered under the Owner's hazard insurance or provided for in this Declaration. Each Owner shall maintain and keep the exterior and grounds of his Patio Home or Townhome in good, neat, clean and sanitary condition and such responsibility shall include the maintenance and care of all lawns, trees, shrubs, hedges, grass, and other landscaping contained within such Lots other than those responsibilities of the Association as set forth in Article IV, Section 2. Each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any portion of the Lot or Patio Home which is the responsibility of the Owner, but which responsibility such Owner fails or refuses to discharge; the Association may specially assess the Owner for any amounts expended by the Association to discharge the responsibility of the Owner defined herein. In the event of any such assessment as herein provided and the non-payment by the Owner within 30 days after notice and demand from the Association, the Association shall have the rights set forth in Article VI, Section 7 hereof.

#### ARTICLE XI MASTER ASSOCIATION

In addition to the covenants and easement contained herein all properties

described herein shall be held, sold and conveyed subject to the Covenants, Conditions and Restrictions for Tanner Plantation Master Association dated May 29, 2001 and recorded in the RMC Office at Berkeley County in Book 2281 at Page 5, as they may be amended.

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## ARTICLE XII GENERAL PROVISIONS

1. Easement for Encroachment. If any portion of a Patio Home or Townhome now encroaches upon any other Patio Home, Townhome or Lot as a result of the construction of the buildings, or if any such encroachment shall occur hereafter as a result of settling or shifting of the buildings, there shall exist a valid easement for these encroachments and for the maintenance of same so long as the buildings stand.

2. Enforcement of Covenants. In the event of a violation or breach of any of the restrictions contained herein by any Owner or agent of such Owner, the Owners of Lots in The Commons, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof and to prevent the violation or breach of any such covenant. In addition to the foregoing, Declarant or the Association shall have the right, wherever there shall have been built or put in place on any Lot in The Commons any structure or landscaping in violation of these restrictions, to enter upon such Lot where such violation exists and summarily abate or remove the same at the expenses of the owner if, after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservations, restrictions, or conditions contained in this Declaration, regardless of how long such failure shall continue, shall not constitute a waiver of or a bar to such right to enforce.

3. Reservation of Easement. The Declarant hereby reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric service, community television antenna, and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, sprinkler systems, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, storm drainage or other public conveniences or utilities on, in or over those portions of such Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Property as may (a) have been used prior to the installation of such utilities for construction of a building; or (b) such portion of the Property as may be designated as the site for a patio home. These easements and rights expressly include the right to cut any trees, bushes and shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations, siltation basins, retention and detention ponds, and tanks within The Commons in any open space or on any portion of the Property designated for such use on the applicable plat of said Property, or to locate same upon any portion of the Property. Such rights may be exercised by a licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service. Following the installation of any utility apparatus or other improvement on any portion of the Property pursuant to the provisions of this paragraph, the Declarant shall restore such portions of the Property as nearly as is reasonably possible to its condition

immediately prior to such installation.

The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

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**4. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant or any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of twenty (20) years from the date this Declaration is recorded. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited and this Declaration shall be automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty (20) year period or during the last year of any subsequent ten (10) year renewal period, Two-thirds (2/3rds) of the votes cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then current term and all holders of first priority deeds to secure debt of any Owner or successor to such Owner consent in writing to the termination of this Declaration. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the president and secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Office of the Register of Deeds (ROD) for Berkeley County, South Carolina, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

**5. Amendments.** Declarant specifically reserves the right to amend this Declaration, or any portion hereof, on its own motion without the consent of any other Owners subject to the consent of the United States Department of Housing and Urban Development, if applicable, for so long as Declarant owns at least one (1) Lot in The Commons. In all other instances, the procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if two-thirds (2/3rds) of the votes cast at such meeting vote in favor of such proposed amendment subject to the consent of the United States Department of Housing and Urban Development, if applicable. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the president and secretary of the Association shall execute an addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be prior to the date on which such addendum is recorded in the Office of the Register of Deeds (ROD) for Berkeley County, South Carolina, the date of

the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Members, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of the amendment, and the total number of votes cast against the amendment. Such addendum shall be recorded in the Office of the Register of Deeds (ROD) for Berkeley County, South Carolina. Notwithstanding any provision herein to the contrary, this Declaration shall not be amended without the express written consent of Declarant until Declarant's rights under Article III, Section 6 have expired.

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6. Notices. Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent and notice thereby given when personally delivered or when mailed, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one of two or more co-owners or co-tenants of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the secretary of the Association, in writing, of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed, shall be deemed to have been given notice if notice was given to his predecessor in title.

7. Severability. Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions thereof which are hereby declared to be severable and which shall remain in full force and effect.

8. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions and to construe and interpret its provisions, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of this Declaration.

9. Authorized Action. All actions which the Association is allowed or required to take under this instrument and all approvals or disapprovals which the Association is authorized to make shall be authorized actions of the Association only if approved by the majority of Members of the Board of Directors of the Association present at a duly held meeting of such Board of Directors, unless the terms of this Declaration provide otherwise.

10. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Association contemplated under this Declaration, neither Declarant nor the Association, nor any director or officer thereof, shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld.

11. Termination of Association. In the event that this Declaration be declared

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to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all of the Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Master-In-Equity for Berkeley County, South Carolina, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within The Commons as set forth below:

(a) Each Lot shall be subject to an annual assessment which shall be paid by the Owner of such Lot to the Trustee. The amount of such annual assessment and its due date shall be determined solely by the Trustee.

(b) Any past-due annual assessment together with interest thereon at the rate of fifteen percent (15%) per annum from the due date and all costs of collection including fifteen percent (15%) of the assessment and interest thereon as reasonable attorney's fees, shall be a personal obligation of the Owner at the time the annual assessments become past due, and it shall also constitute and become a charge and continuing lien on the Lot against which the assessment has been made in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns.

(c) The Trustee shall be required to use the funds collected as annual assessments for the maintenance, repair and upkeep of the Common Properties. The Trustee may charge as a part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. The Trustee shall not have the obligation to provide for maintenance, repair and upkeep of the Common Properties once the funds provided by the annual assessments have been exhausted.

12. Federal Lending Requirements. Declarant may (at Declarant's option) amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association, or other similar agency.

Any such amendment must be with the consent and approval of such agency and must be properly recorded.

13. Annexation.

(a) Additional residential property and Common Area may be annexed to the Properties only with the consent of two-thirds (2/3) of each class of Members, and, if applicable, the consent of the United States Department of Housing and Urban Development.

(b) Notwithstanding the above, lands which are adjacent to the Properties (hereinafter referred to as "Additional Land") may be annexed by the Declarant without the consent of Members within ten (10) years of the date of this instrument, subject to the consent of the United States Department of Housing and Urban Development, if applicable. Provided, however, that should Declarant elect to improve and develop all

or part of the Additional Land, Declarant shall have the right to impose upon the Additional Land supplemental covenants and restrictions which are not substantially different from those contained herein. Notwithstanding anything contained herein which might otherwise be interpreted to produce a contrary result, this Declaration does not create any charge, lien or other encumbrance or restriction on any part of the Additional Land, or affect in any way the title thereto or any part thereof, nor does this Declaration create an obligation upon Declarant to improve and develop all or any portion of the Additional Land.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration of Covenants, Conditions, Restrictions and Easements for The Commons to be executed in its name and its corporate seal hereto affixed as of the 13 day of Sept, 2002.

WITNESSETH:

TANNER EAST COMPANY, LLC

[Signature]

By: Stokes Bush & Barnes Land Company, LLC  
Its: Manager

[Signature]

By: [Signature]

[Signature]

E. Lee Barnes  
Its: Member

STATE OF

PROBATE

COUNTY OF

Personally appeared before me the undersigned witness who, being duly sworn, made oath that s/he saw the within named Tanner East Company, LLC by its Authorized Member sign, seal and deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness whose signature appears above witnessed the execution thereof.

[Signature]

SWORN to before me this  
13 day of Sept, 2002

[Signature] L.S.  
Notary Public for South Carolina  
My Commission expires: 11-22-05

Tanner

10395

-STATE OF SOUTH CAROLINA) AMENDMENT TO DECLARATIONS, COVENANTS,  
COUNTY OF BERKELEY ) CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE COMMONS

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WHEREAS, by instrument dated September 13, 2002 and recorded in the ROD Office for Berkeley County in Book 2915 at Page 265 Tanner East Company, LLC, A South Carolina Limited Liability Company, as Declarant filed the Declaration of Covenants, Conditions, Restrictions and Easements for The Commons; and

WHEREAS, Article XII of said Declaration provides the Declarant has the right to amend the Declaration on its own motion subject to the consent of the United States Department of Housing and Urban Development, if applicable; and

WHEREAS, the Declarant desires to modify said Declaration as hereinafter set forth and the United States Department of Housing and Urban Development's consent is not applicable.

NOW THEREFORE, the Declarant hereby modifies Article VII No. 3 of the Declaration of Covenants, Conditions, Restrictions and Easements for The Commons recorded in the ROD Office for Berkeley County in Book 2915 at Page 265, as it may have been amended, to read as follows:

The regular annual assessments shall be levied by the Board of Directors Association, shall be payable quarterly and shall be used exclusively for the improvement, maintenance, repair and enhancement of the Common Properties, and, to provide the required services as set forth in Article IV, Section 2 hereof and to provide so many of the discretionary services set forth in Article IV, Section 3 as the Board of Directors may elect to provide, and payment of the Master Association assessments.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for The Commons to be executed in its name and its corporate seal hereto affixed as of the 25th day of March, 2004.

WITNESSETH:

Holly C. Nelson  
Sharon M. Barnes

TANNER EAST COMPANY, LLC

By: Stokes Bush & Barnes Land Company, LLC  
Its: Manager

E. Lee Barnes  
E. Lee Barnes  
Its: Member

FILED: RECORDED: INDEXED  
04/16/2004 10:24:39AM  
Rec Fee: 10.00 St Fee: 0.00  
Co Fee: 0.00 Pass: 2  
Issued to: DODDS & HENNESSY  
Register of Deeds Berkeley Co., SC  
Cynthia B. Forte

2

STATE OF Georgia )  
COUNTY OF DeKalb )

The within instrument was acknowledged before me by its maker.

SWORN to before me this

26 day of March, 2004.

Sharon McGone  
Notary Public for Georgia

Sharon McGone  
Notary Public  
DeKalb County, GA  
My Comm. Exp. 2/11/2008

My commission expires: \_\_\_\_\_

**BY-LAWS  
OF  
THE COMMONS AT TANNER PLANTATION HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION.** The name of the corporation is The Commons at Tanner Plantation Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located at c/o William J. Hennessy, Jr., One North Adgers Wharf, Charleston, SC 29401 but meetings of members and directors may be held at such places within the State of South Carolina, County of Charleston, as may be designated by the Board of Directors.

**ARTICLE I**

**Section 1.** "Association" shall mean and refer to The Commons at Tanner Plantation Homeowners Association, Inc., its successors and assigns.

**Section 2.** "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought with the jurisdiction of the Association.

**Section 3.** "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

**Section 4.** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

**Section 5.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 6.** "Declarant" shall mean and refer to Tanner East Company, LLC, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**Section 7.** "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the ROD for Berkeley County, South Carolina.

**Section 8.** "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

**ARTICLE III  
MEETING OF MEMBERS**

**Section 1. Annual Meetings.** The first annual meeting of the members shall be called by the Declarant, or its assigns, and each subsequent regular annual meeting of the members shall be held at the hour of 6:00 P.M. on a date which is between sixty (60) and one hundred twenty (120) days prior to the beginning of the next calendar year. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. At the first annual meeting, the presence of Members or of proxies entitled to cast a 10% of all the votes of each class of membership shall constitute a quorum.

**Section 2. Special Meetings.** Special meetings of the members may be called at any time by the president or by the board of Directors, upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership, or by the Declarant or its assigns prior to the termination of the Class B Membership.

**Section 3. Notice of Meetings.** Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall be given no earlier than thirty (30) days and not later than ten (10) days prior to such meeting, and shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 4. Quorum.** At the first such meeting called (other than the meeting called by the Declarant set forth in Article III, Section 1), the presence of Members or of proxies entitled to cast a majority of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5. Proxies.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary prior to the meeting. A proxy shall be revocable upon receipt of written notice by the Secretary from the Member, and shall automatically cease upon conveyance by the Member of his Lot.

#### ARTICLE IV

##### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

**Section 1. Number.** Upon the expiration of the period of Declarant's right to act as or designate a Director as set forth in the Declaration, the affairs of this Association shall be managed by a board ("Board") of five (5) directors who shall be members of the Association. The Board shall be elected at a special meeting called for such purpose.

**Section 2. Term of Office.** At the meeting as set forth in Article III, Section 1 above, the members shall elect two (2) directors for a term of one year, two (2) directors for a term of two years and one (1) director for a term of three years; and at each annual meeting thereafter the members shall elect such number of directors as necessary to replace the office of those directors whose terms have expired. Each of those directors so elected shall serve for a term of three (3) years.

**Section 3. Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. A director elected by the members may be removed only at a meeting called for the purpose of removing the director and the notice for such meeting must state that one of the purposes of the meeting is to remove the director. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

**Section 4. Compensation.** No director shall receive compensation for any service he may render to the Associations. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

**Section 5. Action Taken without a Meeting.** The directors shall have the right to take any action in the absence of a meeting by obtaining the written approval of a majority of the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

**ARTICLE V  
NOMINATION AND ELECTION OF DIRECTORS**

**Section 1. Nomination.** Nomination for election to the Board of Directors shall be made by a Nomination Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, and serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from members only.

**Section 2. Election.** Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**ARTICLE VI  
MEETINGS OF DIRECTORS**

**Section 1. Regular Meetings.** Regular meetings of the Board of Directors shall be held not less than quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any three (3) directors, after not less than three (3) days notice to each director.

**Section 3. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 1. Powers.** The Board of Directors shall have power to:

- (a) adopt, amend and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties and fines for the infraction thereof;
- (b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- (d) declare the office of a member of the board of directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

**Section 2. Duties.** It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  - (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
  - (2) send written notice of each assessment to every Owner subject thereto as prescribed in the Declaration; and
  - (3) if, in the Board's discretion, to foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the Common Area to be maintained.

**ARTICLE VIII  
OFFICERS AND THEIR DUTIES**

**Section 1. Enumeration of Offices.** The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 2. Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

**Section 3. Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**Section 4. Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the board may, from time to time, determine.

**Section 5. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of 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.

**Section 6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The person appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 7. Multiple Office.** The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other office except in the case of special offices created pursuant to Section 4 of this Article.

**Section 8. Duties.** The duties of the officers are as follows:

**President**

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and may co-sign all checks and promissory notes.

**Vice-President**

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

**Secretary**

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

**Treasurer**

(d) The treasurer may receive and deposit in appropriate bank accounts all monies of the Association and may disburse such funds as directed by resolution of the Board of Directors; may sign all checks and promissory notes of the Association; keep proper books of account; may cause an annual tax return and reconciliation of the Association books to be made by a public accountant at the completion of each fiscal year, and may prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members upon their request.

**ARTICLE IX  
COMMITTEES**

The Board of Directors shall appoint an Architectural Control Committee as provided in the Declaration. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

**ARTICLE X  
BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association. Copies may be purchased from the Association at a reasonable cost.

**ARTICLE XI  
ASSESSMENTS**

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Assessments shall be considered past due if not received by the Association on the due date. A late charge in an amount to be determined by the Board shall be added to any assessment not paid within thirty (30) days after the due date. If the assessment is not paid within sixty (60) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of sixteen (16%) percent

per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waiver or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

**ARTICLE XII  
AMENDMENTS**

**Section 1.** The By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy. As long as there is a Class B Membership, HUDVA has the right to veto any amendments.

**Section 2.** In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

**ARTICLE XIII  
MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**CERTIFICATION**

I, the undersigned, do hereby certify:

**THAT** I am the duly elected and acting secretary of the Association and,

**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.

\_\_\_\_\_  
Secretary