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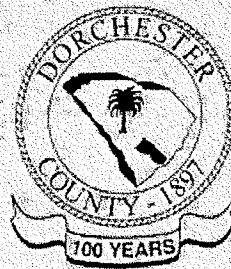
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Register of Deeds



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CRESSWIND AT THE PONDS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CRESSWIND AT THE PONDS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CRESSWIND AT THE PONDS is made as of this 28 day of January, 2015, by KH Ponds LLLP, a Delaware limited liability limited partnership ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Dorchester County, South Carolina, as more particularly described in **Exhibit "A"** ("Initial Property"), and Declarant desires to subject the Initial Property to the provisions of this Declaration and to provide a flexible and reasonable method for the administration and maintenance of the Initial Property; and

WHEREAS, as hereinafter provided in this Declaration, Declarant has retained and reserved the right to submit additional real property ("Additional Property") to the provisions of this Declaration, at a later time and from time to time, as part of Cresswind at The Ponds, as hereinafter defined, on such terms and conditions as Declarant may specify; and

NOW, THEREFORE, Declarant hereby declares that the Initial Property and any Additional Property (collectively, the "Property" or "Cresswind at The Ponds") shall be held, transferred, sold, conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Property, and which shall be binding on all parties having any right, title or interest in the Property or any portion thereof, and their respective heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner thereof and where specifically provided herein, shall benefit such other parties or properties as Declarant shall now or hereafter determine.

ARTICLE 1

DEFINITIONS

1.1 Definitions. When used in this Declaration, the following capitalized terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such capitalized terms:

1.1.1 "Additional Property" shall mean and refer to all or any portion of the real property contained in Cresswind at The Ponds (not currently submitted to this Declaration) and all improvements thereon, together with such other additional property and all improvements thereon, and such other real property which Declarant specifically subjects to the terms of this Declaration by amendment hereto recorded in the Public Records of Dorchester County, South Carolina, as more fully described in **Section 14.6**.

1.1.2 "Adult Housing" shall mean and refer to housing provided for adults 55 years of age and older in accordance with the provisions of the Fair Housing Act of 1988, as

set forth in Title 42 U.S.C. §3601, *et. seq.* (the “Act”), and the Rules and Regulations promulgated thereto, as amended from time to time.

1.1.3 “Annual Assessments” shall have the meaning set forth in **Section 11.3** hereof.

1.1.4 “Architectural Review Committee” or “ARC” shall mean and refer to the committee which shall be established as provided in **ARTICLE 12** hereof.

1.1.5 “Articles of Incorporation” or “Articles” shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time, as filed with the South Carolina Secretary of State.

1.1.6 “Assessment” shall mean and refer to those charges made by the Association from time to time against the Lots or Units in accordance with **ARTICLE 11** of this Declaration, for the purposes and subject to the terms set forth therein.

1.1.7 “Association” shall mean and refer to Cresswind at The Ponds Community Association, Inc., a South Carolina not-for-profit corporation and its successors and assigns.

1.1.8 “Association Documents” shall mean this Declaration, the Articles, the By-Laws, the Community Standards and the Rules and Regulations, as amended from time to time.

1.1.9 “Board of Directors” or “Board” shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

1.1.10 “Bylaws of the Association” or “Bylaws” shall mean and refer to those Bylaws of the Association, which govern the administration and operation of the Association, as the same may be amended, modified or supplemented from time to time, as attached hereto as **Exhibit “B”**. The initial Bylaws are attached hereto for informational purposes only and no amendment of this Declaration shall be required in the event the Bylaws are amended from time to time pursuant to its terms.

1.1.11 “Capital Contribution” shall have the meaning set forth in **Section 11.11** of this Declaration.

1.1.12 “Common Areas” shall mean and refer to all real property interests and personalty including any improvements, amenities, easements, fixtures and facilities thereon owned, leased, controlled or operated by the Association, or the use of which has been granted to the Association as set forth in this Declaration or an amendment thereto, or a deed of conveyance, or that hereafter may be conveyed or leased to the Association or to which use rights have been granted to the Association. Common Areas may include, without limitation, community signage, open space areas, internal buffers, landscape areas, easement areas or other property owned by others, Community Control Program, maintenance areas, Roads, streets, rights-of-way dedicated to a public body but which the Association is required to or may elect to

maintain, parking lots, walkways, sidewalks, street lighting, signage, nature trails, any pedestrian or bike path, trail lighting, parks, and the following when the Association has an easement over or maintenance obligations therefor: Recreational Facilities, Surface Water Management System and Wetland & Upland Conservation Areas. The Common Areas do not include any portion of any Unit. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein. Declarant and/or Master Declarant may, but shall not be required to, designate and convey other property to the Association.

1.1.13 "Common Expenses" shall mean all costs and expenses of the Association and the Common Areas. Common Expenses may include, without limitation, all costs of ownership; operation; administration; all amounts payable by the Association; all amounts required to maintain the Surface Water Management System; all community lighting including up-lighting and entrance lighting, all amounts payable in connection with any agreement between the Association and a service provider or governmental agency; amounts payable to a Telecommunications Provider for Telecommunications Services furnished to all Owners or for the Association's benefit; utilities; taxes; insurance; bonds; Community Control Program; salaries; management fees; professional fees; service costs; supplies; maintenance; repairs; replacements; refurbishments; common area landscape maintenance; and any and all costs relating to the discharge of the obligations hereunder, or as determined to be part of the Common Expenses by the Association. By way of example, and not of limitation, Common Expenses shall include all of the Association's legal expenses and costs relating to or arising from the enforcement and/or interpretation of this Declaration.

1.1.14 "Community Completion Date" shall mean the date upon which all Units in Cresswind at The Ponds, as ultimately planned and as fully developed, have been conveyed by Declarant to Owners other than Declarant.

1.1.15 "Community Control Program" shall mean one or more electronic entrance gates and/or gatehouses. THE PROVISION OF A COMMUNITY CONTROL PROGRAM SYSTEM (INCLUDING ANY TYPE OF GATEHOUSE) SHALL IN NO MANNER CONSTITUTE A WARRANTY OR REPRESENTATION AS TO THE PROVISION OF OR LEVEL OF SECURITY WITHIN THE PROPERTY. NEITHER DECLARANT NOR THE ASSOCIATION GUARANTEE OR WARRANT, EXPRESSLY OR BY IMPLICATION, THE MERCHANTABILITY OF FITNESS FOR USE OF ANY COMMUNITY CONTROL PROGRAM SYSTEM, OR THAT ANY SUCH SYSTEM (OR ANY OF ITS COMPONENTS OR RELATED SERVICES) WILL PREVENT INTRUSIONS, FIRES, OR OTHER OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE COMMUNITY CONTROL PROGRAM SYSTEM IS DESIGNED TO MONITOR THE SAME. EACH AND EVERY OWNER AND THE OCCUPANT OF EACH UNIT ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION, THEIR EMPLOYEES, AGENTS, MANAGERS, DIRECTORS, AND OFFICERS, ARE NOT INSURERS OF OWNERS OR UNITS, OR THE PERSONAL PROPERTY LOCATED WITHIN UNITS. NEITHER DECLARANT NOR THE ASSOCIATION WILL BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY SUCH EVENTS.

1.1.16 “Community Enhancement Fee” shall mean the fee charged by the Conservancy upon each transfer of title to a Unit as set forth in Section 8.12 of the Master Declaration.

1.1.17 “Community Standards” shall have the meaning ascribed thereto in **Section 12.2.1.6** hereof.

1.1.18 “Conservancy” shall mean a separate and distinct not for profit corporation organized under South Carolina law known as “The Ponds Conservancy” which is established to coordinate and administer various programs, projects, services and activities which, in its judgment, provide a benefit to the residents of the Community all as set forth in Section 8.12 of the Master Declaration.

1.1.19 “County” shall mean Dorchester County, South Carolina.

1.1.20 “Cresswind at The Ponds” shall have the meaning set forth in the Recitals hereof subject to additions and deletions thereto as permitted pursuant to the terms of this Declaration. Declarant may, when amending or modifying the description of real property which is subject to the operation of this Declaration, also amend or modify the definition of Cresswind at The Ponds.

1.1.21 “Data Transmission Services” shall mean enhanced services as defined in Section 64.702 of Title 47 of the Code of Federal Regulations, as amended from time to time, and without regard to whether the transmission facilities are used in interstate commerce.

1.1.22 “Declarant” shall mean and refer to KH Ponds LLLP, a Delaware limited liability limited partnership, or any such corporation, partnership, limited liability company or other entity which is specifically assigned the rights of the “Declarant” under this Declaration.

1.1.23 “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Cresswind at The Ponds and all amendments thereof filed for record in the Public Records of Dorchester County, South Carolina.

1.1.24 “Development Order” shall mean and refer to that certain Development Agreement between Greenwood Communities and Resorts, Inc., a South Carolina corporation, and the County, recorded in the ROD Office for the County in Book 5100, Page 13, and the Assignment and Assumption of Development Agreement (The Ponds) by and between Greenwood Communities and Resorts, Inc., KH Ponds LLLP and the County dated December 5, 2013 and recorded December 6, 2013 in Book 9110 at page 34 and thereafter re-recorded on January 2, 2014 in Book 9138 at Page 64.

1.1.25 “Foreclosure” shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

1.1.26 “Individual Assessments” shall have the meaning set forth in **Section 11.5** hereof.

1.1.27 “Initial Property” shall mean and refer to that certain real property more particularly described on **Exhibit “A”**, and all improvements thereon.

1.1.28 “Institutional Mortgage” shall be deemed to mean a Mortgage held by a bank, trust company, insurance company, pension fund or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, and the holder of any Mortgage of public record given or assumed by Declarant, and the successors of any of the foregoing.

1.1.29 “Lot” shall mean any platted residential lot shown on a Plat. Upon completion of the Unit on a Lot, such Lot and the improvements thereon shall collectively be considered to be a Unit for purposes of this Declaration.

1.1.30 “Master Association” means Ponds Community Association, Inc. a South Carolina not for profit corporation, being the entity responsible for the administration of the Master Documents.

1.1.31 “Master Declarant” means KH Ponds LLLP, and its successors and assigns, as ‘Declarant’ under the Master Declaration, said rights being assigned to the Master Declarant pursuant to the Assignment of Declarant’s Rights dated December 5, 2013 and recorded in the Dorchester County Register of Deeds Office on December 6, 2013 in Book 9110 at Page 44, said assignment being re-recorded on January 2, 2014 in Book 9138 at Page 75.

1.1.32 “Master Declaration” means the Declaration of Covenants, Restrictions, Easements, Limitations and Provisions for Membership in the Ponds Community Association, recorded in the RMC Office for the County in Book 6035 Page 061 and all amendments thereof filed for record in the Public Records of the County.

1.1.33 “Master Documents” means the Master Declaration, the Articles of Incorporation and the Bylaws of the Master Association, all as now or hereafter amended, modified or supplemented.

1.1.34 “Member” shall mean and refer to any member of the Association, which shall include each Owner of a Lot or Unit.

1.1.35 “Mortgage” shall mean and refer to a mortgage, installment land sales contract or other similar security instrument granting, creating or conveying a lien upon, or a security interest in, a Lot or Unit.

1.1.36 “Mortgagee” shall mean and refer to the holder of a Mortgage.

1.1.37 “Multichannel Video Programming Service” shall mean any method of delivering video programming to Units including, without limitation, interactive video

programming. By way of example, and not of limitation, the term Multichannel Video Programming Service may include cable television, satellite master antenna television, multipoint distribution systems, video dial tone, or any combination thereof.

1.1.38 "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant or family member of an Owner, occupying or otherwise using a Lot or Unit within the Property.

1.1.39 "Owner" shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Unit.

1.1.40 "Plat" shall mean any plat of any portion of Cresswind at The Ponds filed in the Public Records, as the same may be amended from time to time.

1.1.41 "Premium Channel" shall mean any channel recognized in the industry as premium including, without limitation, HBO, Showtime, Disney, Cinemax and the Movie Channel.

1.1.42 "Property" shall mean all of the real and personal property subject to this Declaration.

1.1.43 "Public Records" shall mean the documents filed of record in the ROD Office for Dorchester County, South Carolina.

1.1.44 "Recreational Facilities" shall mean and refer to the recreational facilities that are owned, leased, controlled or operated by the Association from time to time, which may, at Declarant's sole and absolute discretion, be constructed within the Property. Recreational Facilities shall be part of the Common Areas.

1.1.45 "Roads" shall mean and refer to any street or thoroughfare which is constructed by Master Declarant within the Common Areas, and which is dedicated to the Association, or to any governmental agency, whether same is designated, for example, by way of illustration and not as limitation, as a street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk, alley or similar designation.

1.1.46 "Rules and Regulations" shall mean the rules, regulations, and policies for the administration and use of the Property, which may be adopted and enforced by the Board from time to time.

1.1.47 "Special Assessments" shall mean those Assessments more particularly described as Special Assessments in **Section 11.4** hereof.

1.1.48 "Surface Water Management System" shall mean the collection of devices, improvements, or natural systems whereby surface waters are controlled, impounded or obstructed. This term may include, but is not limited to, storm sewers, exfiltration trenches, wetland preservation areas, Wetland & Upland Conservation Areas, canals, dams, impoundments, reservoirs, drainage maintenance easements and all structures, works and/or

improvements defined in any permit. The Cresswind at The Ponds Surface Water Management System includes those works authorized by the WMD and/or SCDHEC pursuant to the Surface Water Management System Permit.

1.1.49 “Telecommunications Provider” shall mean any party contracting with the Association to provide Owners with one or more Telecommunication Services. Declarant, its affiliates, subsidiaries, joint venturers, associates, and partners may be a Telecommunications Provider. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers. By way of example, with respect to Multichannel Video Programming Service, one Telecommunications Provider may provide the Association such service while another may own, maintain and service the Telecommunications Systems that allow delivery of such Multichannel Video Programming Service.

1.1.50 “Telecommunications Services” shall mean local exchange services provided by a certified local exchange carrier or alternative local exchange company, intraLATA, and interLATA voice telephony and data transmission service and Multichannel Video Programming Service. Without limiting the foregoing, such Telecommunications Services may include the provision of the following services: Toll Calls, Data Transmission Services, Basic Service, Expanded Basic Service and Premium Channels.

1.1.51 “Telecommunications Systems” shall mean all facilities, items and methods required and/or used in order to provide Telecommunications Services to the Property. Without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or other material), conduits, passive and active electronic equipment, pipes, wireless cell sites, computers, modems, satellite antennae site(s), transmission facilities, amplifiers, junction boxes, trunk distribution, drop cables, related apparatus, converters, connections, head-end antennae, earth station(s), appurtenant devices, network facilities necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunications Services. Ownership and/or control of all of a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenant devices (e.g., individual adjustable digital units).

1.1.52 “Toll Calls” shall have meaning given to such term by the South Carolina Public Service Commission and/or the Federal Communications Commission.

1.1.53 “Turnover” shall have the meaning set forth in **Section 10.2** of this Declaration.

1.1.54 “Unit” shall mean and refer to any improved property intended for residential use located within the Property. A Unit shall be deemed created and have perpetual existence upon the issuance of a final or temporary certificate of occupancy for such residence; provided, however, the subsequent loss of such certificate of occupancy (e.g., by casualty or remodeling) shall not affect the status of a Unit, or the obligation of Owner to pay Assessments with respect to such Unit. The term “Unit” includes any interest in land, improvements, or other property appurtenant to the Unit.

1.1.55 “Violations Committee” shall have the meaning ascribed to such term in **Section 12.2.9** herein.

1.1.56 “Wetland & Upland Conservation Areas” shall mean any portion of Cresswind at The Ponds which is intended to be preserved and maintained in a natural state in perpetuity. The Wetland & Upland Conservation Areas shall include all wetland enhancement and wetland creation areas and any preserved upland areas as more specifically described and located on any site plan or Plat of any portion of Cresswind at The Ponds or specified in any applicable permit. All Wetland & Upland Conservation Areas shall be protected in perpetuity and maintained by the Association pursuant to the Development Order and any applicable permit.

1.1.57 “WMD” shall mean Dorchester County.

1.1.58 “Surface Water Management System Permit” shall mean the permit issued by the WMD and/or the South Carolina Department of Health and Environmental Control (“SCDHEC”) as may be amended from time to time.

1.2 Interpretation and Flexibility. In the event of any ambiguity or question as to whether any person, entity, property or improvement falls within any of the definitions set forth in this **ARTICLE 1**, the determination made by Declarant in such shall be binding and conclusive. Moreover, Declarant may alter, amend or supplement the application of any portion(s) of this Declaration to specific portion(s) of the Property.

ARTICLE 2

DEVELOPMENT

2.1 Development of Property. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Unit primarily for the purpose of sale, to make improvements and changes to all Common Areas and to all Lots or Units owned by Declarant, including without limitation: (i) installation and maintenance of any improvements in and to the Common Areas; (ii) changes in the location of the boundaries of any Lots or Units owned by Declarant or of the Common Areas; and (iii) changes in the maintenance of any water, sewer, drainage, irrigation well, septic tank or other utility system or facilities.

2.2 Development of Additional Property. Prior to Turnover, Declarant may subject Additional Property to this Declaration, including without limitation, Common Areas, Recreational Facilities, Roads, vacant lands, and property of all types, including undeveloped lands, platted subdivisions, and lots by recording in the Public Records, an amendment to this Declaration describing the property to be submitted to this Declaration and setting forth any use restrictions, voting rights, maintenance requirements, user fees, dues, or other provisions pertaining to such additional property, if any. Such amendments may include, without limitation, the creation of easements for Telecommunications Systems, utility, drainage, ingress and egress and roof overhangs over any portion of Cresswind at The Ponds; additions or deletions from the properties comprising the Common Areas; changes in the Rules and Regulations, and modifications of restrictions on the Units, and maintenance standards for landscaping. Declarant’s right to amend under this provision is to be construed as broadly as possible. Despite

the fact that Declarant's submission of Additional Property to this Declaration may result in an overall increase in the Common Expenses, and a resulting increase in the Assessments payable by each Lot or Unit, or may result in an increase in the total number of votes or Members in the Association, Declarant shall not be required to obtain the joinder or consent of the Association, any Lot or Unit Owner, any other party, or any Mortgagee except for the approval, if required, of the County or any other government authority having jurisdiction. Any property submitted to this Declaration by amendment, shall be included in the term "Property", and shall be part of Cresswind at The Ponds. In no event shall Declarant be obligated to submit any Additional Property to the provisions of this Declaration.

2.3 No Vested Rights. Each Owner by acceptance of a deed to a Unit irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Association Documents. It is expressly intended that Declarant and the Association have the unfettered right to amend this Declaration and the other Association Documents except as expressly set forth herein.

2.4 Common Areas. The Common Areas of Cresswind at The Ponds are intended to be developed by Master Declarant. While Declarant intends to construct certain Units upon the Lots within Cresswind at the Ponds, Declarant has no ownership of any of the Common Areas within Cresswind at The Ponds and is not responsible for their development. The Common Areas are owned by Master Declarant, which shall construct the Common Areas and convey such Common Areas to the Association as provided herein. **DECLARANT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE EXTENT, CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS. EACH OWNER, BY ACCEPTANCE OF THE CONVEYANCE OF A UNIT WITHIN CRESSWIND AT THE PONDS, SPECIFICALLY RELIEVES DECLARANT FROM ANY RESPONSIBILITY RELATED TO THE COMMON AREAS WITHIN CRESSWIND AT THE PONDS.**

2.4.1 Common Areas Generally. **NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON AREAS" AND AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND OR OBLIGATE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED, LEASED BY OR DEDICATED TO THE ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH ITEM. In addition, the following provisions shall be applicable to the Common Areas.**

2.4.2 Establishment of Common Areas. Declarant may in its sole discretion, establish Common Areas for recreational, maintenance, utilities, access, ingress, egress, or other purposes. The Common Areas shall be only that property dedicated to the Association in a Plat of Cresswind at The Ponds or property designated as such by Declarant in this Declaration, an amendment, deed conveying the Common Areas to the Association or other written instrument recorded in the Public Records, including any improvements and fixtures

thereon, owned by, leased to, or the use of which has been granted to the Association as set forth in this Declaration or an amendment. Common Areas should also include any public property which the Association agrees to maintain, which may include portions of public rights-of-way. Prior to the conveyance, identification and/or dedication of the Common Areas to the Association, any portion of the proposed Common Areas shall be operated, maintained, and administered as Declarant in its sole discretion deems appropriate. During such period, Declarant shall operate, and administer the Common Areas without interference from any Owner or Mortgagee of a Unit or any other person or entity whatsoever. Owners shall have no right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to, leased by, dedicated to, and/or maintained by the Association. THE CURRENT CONCEPTUAL PLANS AND/OR REPRESENTATION, IF ANY REGARDING THE COMPOSITION OF THE COMMON AREAS ARE NOT A GUARANTEE OF THE FINAL COMPOSITION OF THE COMMON AREAS. DECLARANT HAS NO OBLIGATION OR RESPONSIBILITY TO CONSTRUCT OR SUPPLY ANY SUCH COMMON AREAS OF THE ASSOCIATION, AND NO PARTY SHALL BE ENTITLED TO RELY UPON ANY STATEMENT CONTAINED HEREIN AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED, LEASED BY, OR DEDICATED TO THE ASSOCIATION. DECLARANT, SO LONG AS IT CONTROLS THE ASSOCIATION, FURTHER SPECIFICALLY RETAINS THE RIGHT TO ADD TO, DELETE FROM, OR MODIFY ANY OF THE COMMON AREAS REFERRED TO HEREIN.

2.4.3 **Conveyance.** The Common Areas may be dedicated by Plats, created in the form of easements, or conveyed by written instrument recorded in the Public Records, or by quitclaim deed from Master Declarant to the Association. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance and administration of the conveyed portions of Common Areas and other obligations relating to the Common Areas imposed herein. The Association, by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS BEING CONVEYED.

2.4.4 **Form of Common Area Deed.** Each deed of the Common Areas shall be subject to the following provisions:

2.4.4.1 a perpetual nonexclusive easement in favor of governmental agencies for the maintenance and repair of existing road, speed and directional signs, if any;

2.4.4.2 matters reflected in the Plat(s) of Cresswind at The Ponds;

2.4.4.3 perpetual non-exclusive easements in favor of Declarant, its successors, and assigns in, to, upon and over all of the Common Areas for the purposes of vehicular and pedestrian ingress and egress, installation of utilities, landscaping and/or drainage, without charge, including, without limitation, the right to use such roadways for construction vehicles and equipment. The easements reserved in the deed shall run in favor of Declarant, and its employees, representatives, agents, licensees, guests, invitees, successors and/or assigns;

2.4.4.4 all restrictions, easements, covenants and other matters of record.

2.4.5 **Operation After Conveyance.** After the conveyance or dedication of any portion of the Common Areas to the Association, the portion of the Common Areas so dedicated shall be owned, operated and administered by the Association for the use and benefit of the Owners of all property interests in Cresswind at The Ponds including, but not limited to, the Association, Declarant, Owners and any Mortgagees. Subject to the Association's right to grant easements, and other interests as provided herein, the Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to Turnover, the approval of (a) a majority of the Board; and (b) the consent of Declarant, or (ii) after Turnover, approval of (a) sixty six and two-thirds percent (66 2/3%) of the Board, (b) seventy-five percent (75%) of all of the votes in the Association, and (c) the Declarant for so long as Declarant owns any property which is subject to this Declaration.

2.4.6 **Paved Common Areas.** The Common Areas may contain certain paved areas. Without limiting any other provision of this Declaration, the Association is responsible for the maintenance and/or resurfacing of all paved surfaces, including but not limited to roads, bridges, pathways, walking trails, bicycle paths, and sidewalks forming a part of the Common Areas, if any. Although pavement appears to be a durable material, it requires maintenance. The Association shall have the right, but not the obligation, to arrange for an annual inspection of all paved surfaces forming a part of the Common Areas by a licensed paving contractor and/or engineer. The cost of such inspection shall be a part of the Common Expenses of the Association. The Association shall determine annually the parameters of the inspection to be performed, if any. By way of example, and not of limitation, the inspector may be required to inspect the roads and sidewalks forming part of the Common Areas annually for deterioration and to advise the Association of the overall pavement conditions including any upcoming maintenance needs. Any patching, grading, or other maintenance work should be performed by a company licensed to perform the work. From and after the Community Completion Date, the Association should monitor the roads and sidewalks forming the Common Areas monthly to ensure that vegetation does not grow into the asphalt and that there are no eroded or damaged areas that need immediate maintenance.

2.4.7 **Delegation.** Once conveyed or dedicated to the Association, the Common Areas and facilities and improvements located thereon shall, subject to the provisions of this Declaration and the document of conveyance or dedication, at all times be under the complete supervision, operation, control, and management of the Association. Notwithstanding the foregoing, the Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company. The Association specifically shall have

the right to pay for management services on any basis approved by the Board (including bonuses or special fee arrangements for meeting financial or other goals). Declarant, its affiliates and/or subsidiaries shall have the right to manage the Association. Owners and the Association acknowledge that it is fair and reasonable to have Declarant, its affiliates and/or subsidiaries manage the Association. Further, in the event that Common Areas are created by easement or maintenance agreement, the Association's obligations and rights with respect to such Common Areas may be limited by the terms of the document creating such easement or maintenance obligation.

2.4.8 Property Owned by Others. The Association may enter into easement agreements or other use or possessory agreements whereby the Association may obtain the use or possession of certain real property, on an exclusive or non-exclusive basis, whether included or not included within the Property, for certain specified purposes and whereby the Association agrees to maintain and pay for the use, enjoyment, access, taxes, insurance, administration, upkeep, repair, replacement and maintenance of such property. The aforesaid expenses shall be a Common Expense, whether or not such real property shall be Common Areas. Prior to Turnover, no such agreement shall be entered into without the prior written consent of Declarant, which consent may be withheld in Declarant's sole discretion.

2.5 Interest Subject to Plan of Development. Every purchaser of a Lot or Unit shall purchase such Lot or Unit, and every Mortgagee and lienholder holding an interest therein, shall take title, or hold such security interest with respect thereto, subject to Declarant's right to add Additional Property to the Property as hereinabove provided and subject to the provisions of this Declaration. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this **ARTICLE 2** may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant.

2.6 Development Order; Master Plan; Site Plan(s); Subdivision Plat. Prior to Turnover, the Development Order, master plan or one or more site plans, subdivision Plat(s) or resubdivision Plat(s) may be revised or amended, at any time and from time to time, with respect to, including without limitation the locations and dimensions of the Lots, Units, Common Areas, Additional Property, Wetland & Upland Conservation Areas, Roads, utility systems, drainage systems, utility easements, drainage easements, access easements and set-back line restrictions. Notwithstanding the foregoing, any Plat, amendment to the Development Order, master plan or one or more site plans is subject to approval by the County.

2.7 Withdrawal of Property. Declarant may, at any time and from time to time, withdraw any portion of the Property from the provisions of this Declaration as a result of any change whatsoever in Declarant's plans for Cresswind at The Ponds, without the joinder or consent of any party other than the Owners of that portion of the Property to be withdrawn. Any withdrawal of any portion of the Property shall not result in a material adverse change to the overall uniform scheme of development for Cresswind at The Ponds. Declarant shall withdraw portions of the Property from the provisions of this Declaration by executing an amendment to this Declaration which shall be filed in the Public Records, together with a legal description of that portion of the Property withdrawn by such amendment.

2.8 Not a Condominium. The Association created pursuant to this Declaration and the Articles of Incorporation of the Association is expressly not intended to be a condominium association and is not created in accordance with Title 27, Chapter 31 of the Code of Laws of South Carolina (the South Carolina Horizontal Property Act).

2.9 Amendment. This Article shall not be amended without the prior written consent of Declarant.

ARTICLE 3

PROPERTY RIGHTS

3.1 General. Each Lot and Unit shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot or Unit, subject to the provisions of this Declaration. The ownership of each Lot and Unit shall include, and there shall pass with each Lot and Unit as an appurtenance thereto, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot or Unit. Lots shall not be subdivided, and, except as provided in Sections 2.1 and 3.4 hereof, the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the consent of Declarant, so long as Declarant owns a Lot or Unit primarily for the purpose of sale. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two or more Lots into a larger Lot in order to create a Unit site larger than one Lot.

3.2 Use of Common Areas. Until Turnover, Declarant shall have the right to use any portion of the Common Areas, without charge, for any purpose deemed appropriate by Declarant. Every Owner shall have a non-exclusive right, privilege and easement of use and enjoyment in and to the Common Areas, subject to this Declaration as it may be amended from time to time, and subject to any restrictions or limitations contained in this Declaration or in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to reasonable regulation by the Board, and in accordance with procedures which it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee. The rights and easements of enjoyment created hereby shall be subject to the following:

3.2.1 The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real and personal property as security for money borrowed or debts incurred.

3.2.2 The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against Foreclosure.

3.2.3 The right of the Association to suspend:

3.2.3.1 The right of an Owner to use the Common Areas and Recreational Facilities within the Common Areas for any period during which an Assessment or any other charge against such Owner's Unit remains delinquent; and

3.2.3.2 The enjoyment rights and easements of any Owner for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation (other than a delinquent Assessment), of this Declaration, any applicable amendment, the Articles, the Bylaws, or the Rules and Regulations of the Association after notice and hearing pursuant to the Bylaws.

3.2.4 The right of the Association to maintain the Common Areas.

3.2.5 The right of the Board to adopt Rules and Regulations affecting the use and enjoyment of the Common Areas, including, without limitation, rules restricting use of Recreational Facilities and Wetland & Upland Conservation Areas within the Common Areas to Occupants of Units and their guests and rules limiting the number of guests who may use the Common Areas. The Board may also promulgate procedures for the enforcement of the Rules and Regulations, including, without limitation, the assessment of fines against Owners who violate the restrictions regarding the Wetland & Upland Conservation Areas and against Owners, whose family members, guests, invitees, licensees, employees, or agents violate such restrictions. The fines will be levied as an Individual Assessment as set forth in **Section 11.5** hereof upon the Owner who violates the restrictions, or upon the Owner whose family members, guests, invitees, licensees, employees, or agents violate the restrictions. Before any fine shall be effective, the Owner shall be entitled to notice and an opportunity to be heard before the Board. Notwithstanding anything contained herein to the contrary, the foregoing shall be subject to the provisions in the Bylaws which provide for the assessment of fines.

3.2.6 The right of the Board to post motor vehicle speed limits throughout the Common Areas, and to promulgate traffic regulations for the Roads. The Board may also promulgate procedures for the enforcement of the traffic regulations, including, without limitation, the assessment of fines against Owners who violate the traffic regulations and against Owners whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. The fines will be levied as an Individual Assessment as set forth in **Section 11.5** hereof upon the Owner who violates the traffic regulations, or upon the Owner whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. Before any fine shall be effective, the Owner shall be entitled to notice and an opportunity to be heard before the Board. Notwithstanding anything contained herein to the contrary, the foregoing shall be subject to the provisions in the Bylaws which provide for the assessment of fines.

3.2.7 The right of the Board to establish parking regulations throughout the Common Areas and Cresswind at The Ponds. In the event the Board has established parking regulations, the Board shall also promulgate procedures for the enforcement of the parking regulations, including, without limitation, the assessment of fines against Owners who violate the parking regulations and against Owners whose family members, guests, invitees, licensees, employees, or agents violate the parking regulations. The Board will diligently enforce such parking regulations and the fines will be levied as an Individual Assessment as set forth in

Section 11.5 hereof upon the Owner who violates the parking regulations, or upon the Owner whose family members, guests, invitees, licensees, employees, or agents violate the parking regulations. Before any fine shall be effective, the Owner shall be entitled to notice and an opportunity to be heard before the Board. Notwithstanding anything contained herein to the contrary, the foregoing shall be subject to the provisions in the Bylaws which provide for the assessment of fines.

3.2.8 The right of the Association to dedicate or transfer all, or any part, of the Common Areas to any governmental or quasi-governmental agency, authority, utility, water management or water control district, with the consent of Declarant, prior to the Community Completion Date.

3.2.9 The restrictions contained on any Plat, or filed separately, with respect to all or any portion of the Property.

3.2.10 All of the provisions of this Declaration, the Articles, and Bylaws of the Association and all exhibits thereto, and all Rules and Regulations adopted by the Association, as same may be amended from time to time.

3.2.11 The rights and easements reserved to Declarant in this Declaration.

3.2.12 The right of the Association to grant and accept easements as provided in **Section 7.4** hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to the County, the State of South Carolina or to any other local, state or federal governmental entity, or to any public agency or authority, public service district, public or private utility, or other person, with the consent of Declarant, prior to the Community Completion Date.

3.2.13 The rights and easements reserved in this Declaration for the benefit of the Association, its directors, officers, agents and employees.

3.2.14 The rights and easements reserved in this Declaration for the benefit of the Additional Property.

3.2.15 In case of any emergency originating in, or threatening the Property or any Unit, regardless of whether the Owner is present at the time of such emergency, the Board, or any other person authorized by the Board, or the management agent under a management agreement, shall have the right to enter the Property or such Unit, for the purpose of remedying, or abating, the cause of such emergency, and such right of entry shall be immediate.

3.2.16 The right of Declarant and/or the Association to enter into easement agreements or other use or possession agreements whereby Owners, Telecommunications Providers, other service providers and/or the Association and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. The Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be Common Expenses. Any such agreement by the Association prior to the Community Completion Date shall require the consent of Declarant.

3.2.17 The perpetual right of Declarant to access and enter the Common Areas at any time, even after the Community Completion Date, for the purposes of inspection and testing of the Common Areas. The Association and each Owner shall give Declarant unfettered access, ingress and egress to the Common Areas so that Declarant and/or its agents can perform all tests and inspections deemed necessary by Declarant. Declarant shall have the right to make all repairs and replacements deemed necessary by Declarant. At no time shall the Association and/or an Owner prevent, prohibit and/or interfere with any testing, repair or replacement deemed necessary by Declarant relative to any portion of the Common Areas.

3.2.18 The right of Declarant and/or the Association to modify the Common Areas as set forth in this Declaration.

3.2.19 The power of the Association to act as the collection agent on behalf, and at the request, of the Master Association for assessments; provided, however, that any assessments so collected shall not be deemed Assessments or Common Expenses hereunder.

3.2.20 An Owner relinquishes use of the Common Areas at any time that a Unit is leased to a tenant.

3.3 Title to Common Areas. Notwithstanding the manner in which title to the Common Areas is held, the Association shall be responsible for the management, maintenance, and operation of the Common Areas, and for the payment of all real estate taxes and other charges which are liens against the Common Areas, from and after the recording of this Declaration. On or before Turnover, Master Declarant shall convey the Common Areas to the Association by quitclaim deed. Master Declarant shall not be required to provide any title insurance or other related title documents to the Association in connection with the conveyance of the Common Areas. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance, and administration of the conveyed portions of the Common Areas and other obligations relating to the Common Areas imposed herein. The Association shall, and does hereby, indemnify and hold Master Declarant harmless on account thereof. The Association, by its joinder in this Declaration, hereby accepts such dedications or conveyances without setoff, condition, or qualification of any nature. The Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS BEING CONVEYED.

3.4 Changes in Boundaries; Additions to and Easements Over Common Areas. Declarant reserves the right to change and realign the boundaries of the Common Areas and any Lots or Units owned by Declarant, including the realignment of boundaries between adjacent Lots and/or Units owned by Declarant. Declarant's right to change the boundaries of Lots shall include the right to approve minor changes in Lot boundaries after conveyance of Lots from

Declarant, provided that the affected Owners exchange deeds, in which event no other person nor the Association shall have the right to consent to such modifications. Declarant's consent to such modification must be in writing and any such modification must comply with governmental requirements. Furthermore, Declarant reserves the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Common Areas, such other portion of the Property as Declarant, in its discretion, shall choose.

3.5 No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

3.6 Obstruction of Common Areas. No portion of the Common Areas may be obstructed, encumbered, or used by Owners for any purpose other than as permitted by the Association and this Declaration.

3.7 Assumption of Risk. Without limiting any other provision herein, each person within any portion of the Common Areas accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of such Common Areas, including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, (c) view restrictions caused by maturation of trees and shrubbery, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees within any portion of the Common Areas and (e) design of any portion of the Common Areas. The person also expressly indemnifies and agrees to hold harmless Declarant and the Association, and all employees, directors, representatives, officers, agents, and partners of the foregoing, from any and all damages, whether direct or consequential, arising from or related to the person's use of the Common Areas, including for attorneys' fees, paraprofessional fees and costs at trial and upon appeal. Without limiting the foregoing, all persons using the Common Areas, including without limitation, any pool or area adjacent to the lake, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS ARMADILLOS, GOPHER TORTOISE, ALLIGATORS, FISH, RACCOONS, DEER, COYOTES, PANTHERS, FOWL, AND FOXES. DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

3.8 Owner's Obligation to Indemnify. Each Owner agrees to indemnify and hold harmless Declarant and Association, their officers, partners, agents, employees, affiliates, directors and attorneys (collectively, "Indemnified Parties") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the lake and other water bodies within the Property by Owners, and their guests, family members, invitees, or agents, or the interpretation of this

Declaration and/or exhibits attached hereto and/or from any act or omission of Declarant, the Association, or of any of the Indemnified Parties. Should any Owner bring suit against Declarant, the Association, or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorneys' fees and paraprofessional fees at trial and upon appeal.

3.9 Burden Upon the Property. This Declaration and all covenants, conditions and restrictions contained in this Declaration are equitable servitudes, perpetual and run with the land. Each Owner, by acceptance of a deed to a Unit or Lot, and any person claiming by, through or under such Owner (i) agrees to be subject to the provisions of this Declaration and (ii) irrevocably waives any right to deny, and any claim, that this Declaration and all covenants, conditions and restrictions contained in this Declaration are not enforceable under the laws of the State of South Carolina. It is further expressly intended that no re-filing or notice of preservation is necessary to continue the applicability of this Declaration and the applicability of all covenants, conditions, and restrictions contained in this Declaration. This provision is not subject to amendment.

3.10 Nonseverability of Rights. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of any portion of the Property as more specifically set forth herein and may not be severed or alienated from such ownership. The transfer of the fee title to a Unit or Lot, whether voluntary or by operation of law, terminating the Owner's title to that Unit or Lot shall terminate the Owner's rights to the use of and enjoyment of the Common Areas as it pertains to that Unit or Lot. An Owner's rights and privileges under this Declaration are not assignable separately from a Unit or Lot. In the event that any Owner desires to sell or otherwise transfer title of his or her Unit or Lot, such Owner shall give the Board at least fourteen (14) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Board may reasonably require. The transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner and the Unit or Lot pursuant to this Declaration including, without limitation, payment of all Assessments accruing prior to the date of transfer. Until written notice is received as provided in this Section, the transferor and transferee shall be jointly and severally liable for Assessment accruing subsequent to the date of transfer. In the event that upon the conveyance of a Unit or Lot an Owner fails in the deed of conveyance to reference the imposition of this Declaration on the Unit or Lot, the transferring Owner shall remain liable for Assessments accruing on the Unit or Lot from and after the date of conveyance.

3.11 Ownership by Entity. In the event that an Owner is other than a natural person, that Owner shall, prior to occupancy of the Unit, designate one or more persons who are to be the Occupants of the Unit and register such persons with the Association. All provisions of this Declaration and other Association Documents shall apply to both such Owner and the designated Occupants.

3.12 Paramount Right of Declarant. Notwithstanding anything to the contrary herein, prior to the Community Completion Date, Declarant shall have the paramount right to dedicate, transfer, and/or convey (by absolute conveyance, easement, or otherwise) portions of Cresswind at The Ponds for various public purposes or for the provision of Telecommunications Systems,

or to make any portions of Cresswind at The Ponds part of the Common Areas, or to create and implement a special taxing district which may include all or any portion of Cresswind at The Ponds. In addition, the Common Areas of Cresswind at The Ponds may include decorative improvements, berms, waterfalls, and waterbodies. Notwithstanding anything to the contrary herein, the waterbodies may be dry during certain weather conditions or during certain times of the year. Declarant may remove, modify, eliminate or replace these items from time to time in its sole discretion. **SALES BROCHURES, SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT FACILITIES, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. DECLARANT SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT, COMPOSITION, AND DESIGN OF ANY AND ALL COMMON AREAS AT ANY TIME WITHOUT NOTICE AT ITS DISCRETION.**

ARTICLE 4

MEMBERSHIP

4.1 Membership in the Association. Every Owner of a Lot or Unit, shall be deemed to have membership in the Association. The votes of Members other than Declarant shall be cast at meetings of the Association. The number of votes belonging to the Association shall be equal to the number of Lots and Units located within the Property, with the relative voting weights among all the Lots or Units within the Property being equal. The Owner of a Lot or Unit shall have one vote for each Lot or Unit owned, except that two Lots may be combined to form one Lot with one Unit in accordance with the provisions hereof, in which event the Owner shall have a total of only one vote in the Association. This **Section 4.1** shall be subject to the terms of **Section 4.3**.

4.2 Multiple Ownership; Effect of Additional Property on Voting Weights. Declarant reserves the right to determine the voting weights of any Additional Property. Each Owner, by acceptance of a deed or other conveyance for a Lot or Unit, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of the Additional Property to the terms of this Declaration as provided herein. This **Section 4.2** shall be subject to the terms of **Section 4.3**.

4.3 Restrictions on Voting Rights Before Turnover. The terms of **Section 4.1** and **Section 4.2**, and the voting rights of Members and Owners as described therein, shall apply only after Declarant ceases to control the Association as provided in **Section 10.2** and **Section 14.1**; provided, however, that Declarant may at any time and from time to time request the vote of Members and Owners on certain Association matters before Declarant ceases to control the Association as provided in **Section 10.2** and **Section 14.1**.

4.4 Changes in Voting Rights. Notwithstanding anything to the contrary contained herein, so long as Declarant controls the Association pursuant to **Sections 10.2** and **14.1**, Declarant shall have the right in its sole and absolute discretion to change the voting rights of any portion of the Property at any time and from time to time.

ARTICLE 5

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

5.1 Common Areas. The Association shall own, manage, and control the Common Areas and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good clean attractive and sanitary condition, order, and repair, consistent with this Declaration and the Community Standards.

5.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate, the Surface Water Management System, the Wetland & Upland Conservation Areas located within the Property, personal property, and leasehold and other property interests. Such property shall be accepted by the Association, and thereafter shall be maintained as Common Areas by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the conveying deed or instrument.

5.3 Rules and Regulations. The Association, through its Board, may make and enforce reasonable rules governing the use of the Property, in addition to further defining or limiting, and, where specifically authorized hereunder, creating exceptions to those covenants and restrictions set forth in this Declaration. Such rules shall be binding upon all Owners, Occupants, invitees, and licensees until and unless repealed or modified in a regular or special meeting by vote of the Members representing a majority.

5.4 Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Bylaws, the Articles or reasonably implied from or reasonably necessary to effectuate any such right or privilege contained therein. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members.

5.5 Indemnification.

5.5.1 The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member except for expenses incurred from claims arising from such officer, director or committee member's own individual willful misfeasance, malfeasance, criminal misconduct or bad faith.

5.5.2 The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, criminal misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may

also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.6 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the County, or to any other local, state, or federal governmental entity, subject to such approval as may be required by this Declaration.

5.7 Telecommunications Services.

5.7.1 **Authority of Declarant or Board.** Declarant or the Board shall have the right but not the obligation to establish exclusive systems for the provision of Telecommunication Services subject to the regulatory authority of the County and all applicable statutes and ordinances. Declarant or the Board may establish and operate such systems itself or may enter into agreements with related or unrelated persons or entities for this purpose, with any such agreements to be on such terms as Declarant or the Board shall deem, in its sole discretion, to be in the best interests of the Owners. If Declarant is not the Telecommunications Provider for any particular Telecommunications Service, Declarant shall have the right to receive, on a perpetual basis, all or a portion of access fees and/or the revenues derived from such Telecommunications Service within the Property as agreed, from time to time, between the Telecommunications Provider and Declarant. Any such systems for Telecommunications Services shall be mandatory for all Owners, regardless of when they took title to a Unit.

5.7.2 **Terms of Services.** The terms upon which the Telecommunications Services are established and operated, whether directly by Declarant or by any party contracting with Declarant for this purpose (Declarant or any such party operating the Telecommunications Services or both being referred to herein as the "Telecommunications Provider"), may include, but shall not be limited by or to, the following:

5.7.2.1 Every Unit within the Property receiving Telecommunications Services pursuant to the terms of this Article may be subject to a charge, payable per Unit on the first day of each month or quarter in advance, of specified dollar amounts for Telecommunications Services, which dollar amounts are subject to periodic adjustment.

5.7.2.2 The Association may impose assessments for Telecommunications Services fees due and payable as provided for in **Section 5.7.2.1** and may collect the same and remit the amount collected to the Telecommunications Provider.

5.7.2.3 Where an institutional mortgagee or other Owner of a Unit obtains title to the Unit as a result of the foreclosure of an institutional mortgage, such acquirer of title, its successors and assigns, shall not be liable for the payment of the aforementioned charges pertaining to such Unit which become due prior to acquisition of title in the manner provided above. Such charges shall be Common Expenses payable by the Association.

5.7.2.4 Declarant may exclude nonresidential property within the Property from the provisions of this **Section 5.7.2** and may further exclude residential property which, in the determination of Declarant, has uses for Telecommunications Services inconsistent with the overall design of such services in the Property as a whole.

5.7.3 **Easement for Telecommunications Services.** Declarant hereby (i) reserves for itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) grants to each Telecommunications Provider, providing Telecommunications Services to all or a part of the Property pursuant to an agreement between Declarant or the Board and such Telecommunications Provider, and for any successors or assigns of any of the foregoing, a perpetual easement, privilege and right in and to, over, under, on and across all of the Property for the purpose of erecting, installing, maintaining, operating and removing any and all equipment or other property associated with the Telecommunications Services.

5.7.4 **Structures.** Notwithstanding anything to the contrary in the Declaration, Declarant hereby reserves for itself and for any Telecommunications Providers, and for any successors or assigns of any of the foregoing, the right to erect, install, maintain, operate and remove from the Property, at any time and from time to time, any satellite dish, tower or other such structure or equipment for the purpose of establishing and operating Telecommunications Services.

5.7.5 **Restoration.** Upon the completion of any installation, upgrade, maintenance, repair, or removal of the Telecommunications Systems or any part thereof, each Telecommunications Provider shall restore the relevant portion of the Common Areas and/or any Unit to as good a condition as that which existed prior to such installation, maintenance, repair or removal. Failure by Telecommunications Provider to complete such restoration within ten (10) days after receiving written notice from Declarant or the Board of such failure shall vest in Declarant or the Board the right (but not the obligation) to restore or cause to be restored such portion of the Common Areas and/or Unit disturbed by such work, all at such Telecommunications Provider's sole cost and expense, except for in emergency situations whereby Declarant or the Board may restore or cause to be restored such disturbed portion of the Common Areas and/or Unit. In the event that Declarant or the Board exercises the right of self-help, each Telecommunications Provider agrees in advance that Declarant or the Board shall have the sole right to (i) select the contractors to perform such work and (ii) determine the extent of required restoration. This remedy of self-help is in addition to all other remedies of Declarant or the Board hereunder. All reasonable expenses incurred by Declarant or the Board in connection with such restoration shall be paid by Telecommunications Provider within ten (10) days of delivery to Telecommunications Provider of Declarant's or the Board's invoice therefor. Any expenses not so paid when due shall bear interest from the due date at the maximum rate of interest allowed by the law of the State of South Carolina for such obligations, or as provided in any agreement between a Telecommunications Provider and Declarant or the Board.

5.8 Community Control Program.

5.8.1 **Right to Install.** Declarant or the Board shall have the right, but not the obligation, to install and/or contract for the installation of a Community Control Program for

the Property. Prior to Turnover, all contracts for a Community Control Program shall be subject to the prior written approval of Declarant. Any contracts or agreements respecting a Community Control Program may provide that Declarant receive compensation for approving such contract. Declarant or its nominees, successors, assigns, affiliates, and licensees may install such a Community Control Program. Declarant reserves the right, at any time and in its sole discretion, to discontinue or terminate any Community Control Program prior to Turnover. In addition, all Owners specifically acknowledge that the Property may have a perimeter Community Control Program, such as fences, walls, hedges, or the like on certain perimeter areas. Declarant and the Board shall not be held liable for any loss or damage by reason or failure to provide an adequate Community Control Program or ineffectiveness of Community Control Program measures undertaken.

5.8.2 No Liability. NEITHER THE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF THE HEALTH, SAFETY, WELFARE OR SECURITY OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, THE NATURE TRAILS, ANY PEDESTRIAN OR BIKE PATH, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, ALARM SYSTEM, COMMUNITY CONTROL PROGRAM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS, OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS LESSEES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, AND DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

5.8.3 Components. A Community Control Program, if installed, may include one or more manned gatehouses and one or more electronic gates. Declarant and the Board do not warrant or guaranty in any manner that the system will include these items, but reserve the right to install or provide the foregoing items, or any other items they deem appropriate in their sole and absolute discretion. After Turnover, the Association may expand the Community Control Program by a vote of the majority of the Board, without the joinder or consent of the Owners or any third parties. Without limiting the foregoing, Declarant and the Board reserve the right to, at any time, increase, decrease, eliminate, or add manned or unmanned gate houses, information booths, sensors, gates and other access monitoring measures as they deem appropriate in their sole and absolute discretion; provided, however no changes shall be made prior to Turnover without the prior written consent of Declarant.

5.8.4 Part of Common Expenses. The cost of operating and monitoring any Community Control Program may be included in Common Expenses and may be payable as a portion of the Assessments against Owners. Any such Community Control Program shall be

mandatory for all Owners, regardless of whether or not they utilize the Community Control Program or services of such system.

5.8.5 Owners' Responsibility. All Owners and Occupants of any Unit, and the tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association, its Board and officers, Declarant, their nominees or assigns, or any successor Declarant, and the ARC and its members, do not represent or warrant that (a) any Community Control Program, designated by or installed according to guidelines established, will not be compromised or circumvented, (b) any Community Control Program will prevent loss by fire, smoke, burglary, theft, hold-up, bodily injury or harm or otherwise, and/or (c) the Community Control Program will in all cases provide the detection for which the system is designed or intended. In the event that Declarant elects to provide a Community Control Program, Declarant shall not be liable to the Owners, Occupants or the Association with respect to such Community Control Program, and the Owners, Occupants and the Association shall not make any claim against Declarant for any loss that an Owner, Occupant or the Association may incur by reason of break-ins, burglaries, acts of vandalism, personal injury or death, which are not detected or prevented by the Community Control Program. Each Owner, Occupant and the Association is responsible for protecting and insuring themselves in connection with such acts or incidents.

5.9 Surface Water Rights. The Association may establish programs and Rules and Regulations for reclamation of surface water and storm water runoff for appropriate uses within the Property, and may require Owners and Occupants of Units to participate in such programs to the extent reasonably practical. No Owner or Occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from Units. The Board shall also have the right to establish restrictions on the use of surface water within the Property. Lakes, canals, and other open surface waters with the Property are designed as water retention and water management areas and are not designed solely as aesthetic features. From time to time, low ground water elevations or drought conditions may cause the Common Areas, lakes, canals, creeks, wetlands and other water management areas to be shallow or dry, or lakebed areas to be exposed.

ARTICLE 6

MAINTENANCE

6.1 Responsibilities of Owners.

6.1.1 General. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots and Units, together with all other improvements thereon or therein and driveways and grounds on and within a Lot or Unit, shall be the responsibility of the Owner of such Lot or Unit. Each Owner shall maintain his or its own Unit including, without limitation, structures, boundary walls and fences, driveways, parking areas, the irrigation system and other improvements comprising the Unit in neat, clean and sanitary condition and in good repair in a manner consistent with the Community Standards and this Declaration. The cost and expense of obtaining utilities exclusively serving a particular Lot or Unit shall be the responsibility of the Owner of such Lot or Unit. The Owner's responsibility shall include the maintenance and care of all exterior surfaces of all Units,

buildings and other structures. As provided in **Section 6.2.3** hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. If such Owner's Lot or Unit is subject to the approval of the ARC, such Owner shall not (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Unit or the landscaping, grounds or other improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the ARC as provided in **ARTICLE 12** hereof, or (ii) do any work which, in the reasonable opinion of the ARC, would jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the ARC.

Each Owner shall properly irrigate and fertilize the lawn and landscaping on such Owner's Lot and shall make adjustments to the irrigation system cycles as may be recommended by the Association from time to time. Failure to properly irrigate, fertilize or to properly maintain the irrigation system may result in severe damage to the lawn and landscaping and shall constitute a violation of this Declaration and the Rules and Regulations of the Association. In addition, each Owner shall be solely responsible for all costs of repair or replacement of lawn and/or landscaping caused by the Owner's failure to properly irrigate as recommended by the Association. If any Owner fails to properly irrigate or to properly maintain the irrigation system in accordance with this Section, the Association may enter the Lot and conduct the necessary irrigation and/or maintenance and assess all costs incurred by the Association against the Unit and the Owner thereof in accordance with the further provisions of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

6.1.2 Requirement to Maintain Insurance. Each Owner shall be required to obtain and maintain adequate insurance of his or her Unit. Such insurance shall be sufficient for necessary repair or reconstruction work, and/or shall cover the costs to demolish a damaged Unit as applicable, remove the debris, and to resod and landscape the land comprising the Unit. Upon the request of the Association, each Owner shall be required to supply the Board with evidence of insurance coverage on his Unit which complies with the provisions of this Section. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall specifically have the right to bring an action to require an Owner to comply with his or her obligations hereunder.

6.1.3 Requirement to Reconstruct or Demolish. In the event that any Unit is destroyed by fire or other casualty, the Owner of such Unit shall do one of the following: the Owner shall commence reconstruction and/or repair of the Unit ("Required Repair"), or the Owner shall tear the Unit down, remove all the debris, and resod and landscape the property comprising the Unit as required by the ARC ("Required Demolition") to the extent permitted under law. If an Owner elects to perform the Required Repair, such work must be commenced within thirty (30) days of the casualty and such reconstruction and/or repair must be completed in a continuous, diligent, and timely manner in compliance with the Community Standards. If an Owner elects to perform the Required Demolition, the Required Demolition must be commenced within thirty (30) days of the casualty and completed within sixty (60) days from the

date of the casualty or such longer period of time established by the Board in its sole and absolute discretion subject to extension if required by law. Then, upon completion of the Required Demolition, such Owner shall be required to commence construction of a new Unit upon the Lot in accordance with plans and specifications approved by the ARC. Such construction must commence not later than nine (9) months from the date of the casualty and be completed in a continuous, diligent, and timely manner in compliance with the Community Standards. In the event that the Owner elects to perform the Required Demolition and same is not commenced within thirty (30) days of the casualty, the Association shall have the right to perform such Required Demolition, the expense of which shall be charged to such Owner as an Individual Assessment. In the event that, following the Required Demolition, commencement of construction of a new Unit upon the Lot does not commence within nine (9) months from the date of the casualty, the Association shall have the right to levy a fine against such Owner, which shall be assessed as an Individual Assessment. The Association shall have the right to inspect the progress of all reconstruction and/or repair work. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall have a right to bring an action against an Owner who fails to comply with the foregoing requirements. By way of example, the Association may bring an action against an Owner who fails to either perform the Required Repair or Required Demolition on his or her Unit within the time periods and in the manner provided herein. Each Owner acknowledges that the issuance of a building permit or a demolition permit in no way shall be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

6.1.4 **Standard of Work.** The standard for all demolition, reconstruction, and other work performed as required by this Section shall be in accordance with the Community Standards and any other Rules and Regulations established by the Association with respect to any casualty that affects all or a portion of Cresswind at The Ponds

6.2 Association's Responsibility.

6.2.1 Except as may be otherwise specifically provided herein, the Association shall maintain and keep in good repair all portions of the Common Areas, the Wetland & Upland Conservation Areas and the Surface Water Management System, which responsibility shall include the maintenance, repair and replacement of (i) all Roads, bridges, parks, walks, sidewalks, parking areas, streetlights, entrances and guardhouses, landscaped areas, Recreational Facilities, the nature trails, any pedestrian or bike path and other improvements made by Declarant or the Association situated within the Common Areas or within easements encumbering Lots or Units pursuant to **ARTICLE 7** hereof, (ii) such monitoring systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Surface Water Management System and which are not maintained by a public authority, public service district, public or private utility or other person, (iii) maintenance of all irrigation systems within the Common Areas, (iv) all lawns, trees, shrubs, hedges, grass and other landscaping and all lakes and ponds situated within or upon the Common Areas, and (v) the Surface Water Management System, all Wetland & Upland Conservation Areas, and all retention and drainage areas and facilities constructed by Declarant wherever located, that are part of the Common Areas. The Association and Declarant shall not be liable for injury or damage to any person or property (A)

caused by the elements or by any Owner or any other person, (B) resulting from any rain, drought or other surface water which may leak, diminish, restrain or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is that of the Association or Declarant. Nor shall the Association or Declarant be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

6.2.2 Maintenance of Property Owned by Others. The Association may maintain vegetation, landscaping, sprinkler system, community identification/features, Roads, and/or other areas or elements designated by Declarant upon areas which are within or outside of Cresswind at The Ponds. Such areas may abut, or be proximate to Cresswind at The Ponds and may be owned by, or dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity. These areas may include (for example and not limitation) swale areas, landscape buffer areas, or median areas within the right-of-way of public streets, roads, drainage areas, community identification or features, lakes, community signage or other identification and/or areas within canal rights-of-ways or other abutting waterways.

6.2.3 Failure of Owner to Discharge Obligations. In the event that Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or his or her family, tenants, guests or invitees, and is not covered and promptly paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, shall give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situation, or the failure of any Owner to comply with the provisions hereof after notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, repair or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the Assessment to which such Owner and his or her Lot or Unit are subject. In the event that Declarant undertakes such maintenance,

cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses of any nature. In the event Declarant or the Association provides any of the forgoing maintenance, repair or replacement, the Declarant or the Association, as applicable, shall not be obligated to procure bids for such maintenance repair or replacement and shall, in their sole discretion, designate a contractor to perform such work; however the Association shall be required to obtain competitive bids if required by applicable law.

ARTICLE 7

EASEMENTS

7.1 Access Easements. All Owners, by accepting title to Lots or Units conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Lot or Unit and acknowledge and agree that such access, ingress and egress shall be limited to Roads, walkways, nature trails, paths, sidewalks and other Common Areas located within the Property from time to time for such purposes provided that pedestrian and vehicular access to and from all Lots and Units shall be provided at all times. There is reserved unto Declarant, the Association and their respective successors and assigns the right and privilege, but not the obligation, to hire persons and/or to maintain electronically-controlled gates controlling vehicular access to and from the Property. In addition, in the event that an Owner is unable to access portions of their Lot or Unit without crossing or entering a portion of an adjoining Lot, Unit or Common Area, then such Owner shall have an easement of access over and upon such adjoining Lots, Units, and/or Common Areas for the purposes of allowing such Owner to (i) install, construct or establish improvements to such Owner's Lot or Unit; (ii) repair, maintain, replace and/or upgrade portions of such Owner's Lot or Unit; and (iii) access the rear of the Lot or Unit from the front of the Lot or Unit and access the front of the Lot or Unit from the rear of the Lot or Unit.

7.2 Permits, Licenses and Easements. Prior to Turnover, Declarant, and thereafter the Association, shall, in addition to the specific rights reserved to Declarant herein, have the right to grant, modify, amend and terminate permits, licenses and easements over, upon, across, under and through the Property (including Units) for Telecommunications Systems, utilities, roads and other purposes reasonably necessary or useful as it determines, in its sole discretion. To the extent legally required, each Owner shall be deemed to have granted to Declarant and, thereafter, the Association an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

7.3 Easements for Declarant.

7.3.1 There is hereby reserved for the benefit of Declarant, for a period of five (5) years following the conveyance of all the Lots in the Property to Members, an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of grading and drainage, 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.

7.3.2 Prior to the Community Completion Date, Declarant shall have an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing Units and other improvements in and to the Lots and the Additional Property and for installing, maintaining, repairing and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by **ARTICLE 2** hereof, 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. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot or Unit or has the right to submit the Additional Property to this Declaration, Declarant shall have an alienable, transferable and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereof for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners to the use of the Common Areas.

7.4 Easement for Utilities and Public Services. There is hereby reserved for the benefit of Declarant, the Association and their respective successors and assigns, the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from the County or any other public authority or agency, public service district, public or private utility, upon, over, under and across: (i) all or any portion of the Common Areas; (ii) those portions of all Lots and Units as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining and using any cable television, Telecommunications Systems, Community Control Program system, and all utilities, including, but not limited to, storm sewers, drainage systems and retention ponds and facilities for the Property or any portion thereof, and electrical, gas, telephone, water and sewer lines, provided that such easements shall not unreasonably affect the developability of any such Lot or Unit. Such easements may be granted or accepted by Declarant, or by the Board of Directors; provided, however, that prior to the Community Completion Date, the Board of Directors must obtain the written consent of Declarant prior to granting and/or accepting any such easements. To the extent possible, all utility lines and facilities serving the Property and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Property so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems; provided, however, that to the extent practicable, Declarant and/or the Board of Directors shall endeavor to obtain an undertaking from such utility company or other supplier or servicer to take reasonable actions to repair any damage caused by such utility company or other supplier during the exercise of any rights conveyed under any easement granted hereunder; provided, however, that Declarant, the Association and the Board shall have no liability therefor.

7.5 Easement for Sheriff and Fire Rescue. Declarant hereby grants to the County Sheriff or County Fire Rescue and any other relevant governmental authority or agency, as shall from time to time have jurisdiction over the Property with respect to law enforcement and fire

protection, the perpetual, non-exclusive right and easement upon, over and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Property as shall be required or appropriate from time to time by such governmental authorities under applicable law.

7.6 Easements for Association.

7.6.1 There is hereby reserved 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 and any employees of such manager, to enter upon any Lot or Unit or any portion thereof in the performance of their respective duties. 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 or Unit directly affected thereby.

7.6.2 Easements for the use of the Surface Water Management System and for drainage and installation and maintenance of drainage facilities are granted to the Association and Declarant as shown on all recorded Plats for the Property or as may otherwise be installed from time to time. Within these easement areas no structure, planting or other material other than sod, shall be placed or permitted to remain (unless installed by Declarant) which may interfere with such installation and maintenance or which may obstruct or retard the flow of water through drainage channels. The foregoing easements shall cover all lakes and drainage easements located anywhere within the Property. The Association shall have the right to contract for the maintenance of any portion of the Surface Water Management System with an established water management or water control district or with any other party.

7.6.3 Easements for the installation and maintenance of sod and other landscaping of swales and other areas are hereby granted to the Association and Declarant, within all public or private roads and road rights-of-way and as shown on all recorded Plats for the Property. Within these easement areas, the Association or Declarant may install and maintain sod and such other landscaping as the Association or Declarant deems necessary or appropriate. The Association and Declarant shall have access to all Lots and Units for the purpose of the operation and maintenance of such landscape easements.

7.6.4 Easements for the installation and maintenance of street lights are hereby granted to the Association and Declarant, within all public or private roads and road rights-of-way and as shown on all recorded Plats for the Property. Within these easement areas, the Association or Declarant may install and maintain streetlights and related apparatus as the Association or Declarant deems necessary or appropriate. The Association and Declarant shall have access to all Lots and Units for the purpose of the operation and maintenance of such street light easements.

7.7 Sales and Construction Easement. In addition to the rights reserved elsewhere herein, Declarant reserves an easement for itself or its nominees over, upon, across, and under Cresswind at The Ponds as may be required in connection with the development of Cresswind at The Ponds and other lands designated by Declarant and to promote or otherwise facilitate the development, construction and sale, marketing and/or leasing of Units and other lands designated

by Declarant. Without limiting the foregoing, Declarant specifically reserves the right to use all paved roads and rights of way within Cresswind at The Ponds for vehicular and pedestrian ingress and egress to and from construction sites and for the construction and maintenance of any Telecommunication System provided by Declarant as service provider. Specifically, each Owner acknowledges that construction vehicles and trucks may use portions of the Common Areas. Declarant shall have no liability or obligations to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of the Association payable by all Owners as part of the Common Expenses. Without limiting the foregoing, at no time shall Declarant be obligated to pay any amount to the Association on account of Declarant's use of the Common Areas for construction purposes. Declarant intends to use the Common Areas for sales of new and used Units. Further, Declarant may market other residences and commercial properties located outside of Cresswind at The Ponds from Declarant's sales facilities located within Cresswind at The Ponds. Declarant has the right to use all portions of the Common Areas, including without limitation, the clubhouse, if any, in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model Units, installing signs and displays, holding promotional parties and picnics, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of new and used residential Units. The easements created by this Section, and the rights reserved herein in favor of Declarant, shall be construed as broadly as possible and supplement the other rights of Declarant set forth herein. At no time shall Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

7.8 Easement for Additional Property. There is hereby reserved in Declarant for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for: (i) pedestrian and vehicular ingress, egress and parking, across, within, and on all Roads, sidewalks, the nature trails, any pedestrian or bike path and parking facilities, from time to time located within the Common Areas or within easements serving the Common Areas; (ii) the installation, maintenance, repair, replacement and use within the Common Areas and those portions of Lots and Units encumbered pursuant to **Section 7.4** hereof, of Community Control Program systems and utility facilities and distribution lines, including without limitation drainage systems, storm sewers and electrical, gas, telephone, water, sewer and Telecommunication Services system lines; and (iii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements from time to time thereon.

7.9 Maintenance Easement. Subject to the terms of **Section 6.1** hereof, there is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Unit for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Property, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

7.10 Easements for Encroachments. Declarant hereby grants an easement for encroachment in the event any improvements upon the Common Areas now or hereafter encroaches upon a Unit, or in the event that any Unit now or hereafter encroaches upon the Common Areas or upon another Unit, as a result of minor inaccuracies in survey, construction, reconstruction, or due to settlement or movement or otherwise to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. The encroaching improvements shall remain undisturbed as long as the encroachment exists. This easement for encroachment shall also include an easement for the maintenance and use of the encroaching improvements. Provided, however, that at no time shall there be any encroachment onto the Surface Water Management System, or the Wetland & Upland Conservation Areas without the written consent of the WMD, or any other governmental agency, as applicable. In no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, Occupant or the Association.

7.11 Creation of Easements. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to be so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally granted the benefit of such easement, and the Owners and Members hereby designate Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' or Members' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited.

7.12 Master Association and Conservancy Easements. The Master Association and the Conservancy, their agents, employees, contractors and assigns shall have a non-exclusive easement to enter onto the Property for the limited purpose of performing such functions as are necessary for the maintenance of certain drainage and conservation areas.

7.13 Driveway and Sidewalk Repair Easement. Each Owner shall be responsible to timely repair, maintain and/or replace the driveway comprising part of a Unit and the sidewalk abutting the front Lot of the Unit, including, but not limited to, any damage caused by Declarant, the Association or by the holder of any easement over which such driveway or sidewalk is constructed. Each and Owner, by acceptance of a deed to a Lot or Unit, shall be deemed to have agreed to indemnify and hold harmless the Association and the holder of any such easement, including without limitation, all applicable utility companies and governmental agencies, their agents, servants, employees and elected officials, from and against any and all actions or claims whatsoever arising out of the use of the Common Areas and any easement or the construction and/or maintenance of any driveway or sidewalk in that portion of the Common Areas, easement area, or in a public right-of-way between the boundary of such Owner's Unit and the edge of the adjacent paved roadway. Further, each Owner agrees to reimburse the Association any expense

incurred in repairing any damage to such driveway or sidewalk in the event that such Owner fails to make the required repairs, together with interest at the highest rate allowed by law.

7.14 Self Help/Enforcement Action (or Right of Entry). **Whenever Declarant and/or the Association, its agents and assigns, is permitted by this Declaration to correct, repair, clean, preserve, clear out, or do any action on the Unit of an Owner, entering the Unit and taking such action shall not be deemed a trespass.** Instances permitting said right to enter include, but in no way are limited to, (a) removing non-conforming structures or improvements; (b) mowing, pruning, removing, clearing or cutting underbrush, weeds or other unsightly growth and trash; and (c) grading, landscaping, and constructing and maintaining erosion prevention devices before or after a building or structure has been constructed. In the event that Declarant or the Association deems it necessary to enter upon any Unit to correct any condition, as set forth above, all expenses incurred in such corrective action shall be the responsibility of the Owner, together with interest at the maximum rate allowed by law, and such expenses may be charged and collected in like manner against such Owner as an Assessment pursuant to this Declaration. Such costs to be paid within thirty (30) days after receipt by Owner of an invoice from Declarant or the Association, as the case may be, setting forth the cost of such work. If the Owner fails to voluntarily remit such reimbursement in a timely manner, the Declarant or the Association shall be entitled to enforce collection thereof in a court of competent jurisdiction and shall likewise be entitled to collect all costs and expenses of collection, including reasonable attorney fees incurred by the Declarant or the Association, as applicable, and shall further be entitled to collect a late charge equal to one and one-half (1½%) percent per month of the amount of such invoice from the date of said invoice until fully paid.

ARTICLE 8

SURFACE WATER MANAGEMENT SYSTEM

8.1 Maintenance of Surface Water Management System. The Property is subject to the WMD and/or SCDHEC approved Surface Water Management System and the related Surface Water Management System Permit, as may be modified from time to time. In order to implement aspects of the Surface Water Management System the Association will maintain the Surface Water Management System. Portions of the Surface Water Management System facilities constructed by Declarant shall be maintained by the Association, such as roads/streets, curbing, sidewalks, the exfiltration system within the roads/streets and drainage easement areas within the Property. Accordingly, certain parcels of real property within the Property have or will be dedicated or conveyed, in fee or by easement to the Association for stormwater retention, drainage, streets and/or roads. The Association shall maintain its portion of the Surface Water Management System in compliance with the rules and regulations promulgated by the WMD and/or SCDHEC. The Surface Water Management System plans shall cover surface water drainage throughout the Property, including but not limited to regular and storm drainage on dedicated streets and other rights of way, canal drainage, and such other requirements as may be imposed by the WMD and/or SCDHEC. In accordance with this Section, the Association: (a) shall apply for and obtain such permits and licenses as may be required by the applicable governmental agencies, (b) at the Association's expense, provide Declarant with any and all plans and specifications, surveys, descriptive maps, and other documentation required for the

maintenance of surface water as contemplated by this Section and shall give and grant to Declarant, owners of land adjacent to the Property, the County, any and all easements and rights of way required to effect real property surface water management, and (c) after the original development of Declarant, the Association shall cause all physical earth moving, landscaping, sloping, grading and other work required to be done on the Property, in connection with the maintenance of the Surface Water Management System to be done at the cost and expense of the Association. As further provided in this Declaration, the Association shall be entitled to (i) assess Members for the cost of operation, maintenance and repair of the Surface Water Management System including but not limited to work within retention areas, drainage structures and drainage easements, (ii) establish Rules and Regulations with respect to the operation and maintenance of the Surface Water Management System, and, (iii) contract with third parties for the provision of such operation and maintenance. In addition, in the event that a drainage swale is constructed upon any Lot, for the purpose of managing and containing the flow of excess surface water, the owner of such Lot shall be responsible for the maintenance, operation and repair of the drainage swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow a drainage swale to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the WMD and/or SCDHEC. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in a drainage swale is prohibited. No alteration of a drainage swale shall be authorized and any damage to a drainage swale, whether caused by natural or human induced phenomena, shall be repaired and the damaged drainage swale shall be returned to its former condition as soon as possible by the Owner of the Lot upon which the drainage swale is located.

8.2 Amendments Affecting the Surface Water Management System. Any proposed amendment to Association Documents which will affect the Surface Water Management System, including any environmental conservation area and the water management portions of the Common Areas must have the prior written approval of the WMD and/or SCDHEC. The Association's registered agent shall maintain copies of all Surface Water Management System permits and correspondence respecting such permits, and any future Surface Water Management System permit actions shall be maintained by the Association's registered agent for the Association's benefit.

8.3 Notices and Disclaimers as to Water Bodies. NEITHER DECLARANT, NOR THE ASSOCIATION, NOR THE COUNTY, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE OR BOARD MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES"), SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES

IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES SHALL, FROM TIME TO TIME, EXCAVATE, CONSTRUCT AND MAINTAIN LAKES AND WATER BODIES WITHIN OR IN PROXIMITY TO THE PROPERTY. NOTWITHSTANDING THE FOREGOING, EXCAVATION OR CONSTRUCTION OF WATER BODIES SHALL BE PROHIBITED UNLESS AUTHORIZED BY THE APPLICABLE SOUTH CAROLINA WATER MANAGEMENT DISTRICT PERMIT. IN THE EVENT THAT THE EXCAVATION OR CONSTRUCTION OF WATER BODIES IS NOT AUTHORIZED BY SAID PERMIT, SUCH EXCAVATION OR CONSTRUCTION MAY ONLY TAKE PLACE IF A PERMIT MODIFICATION IS OBTAINED FROM THE SOUTH CAROLINA WATER MANAGEMENT DISTRICT. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH SUCH OWNER, OCCUPANT OR USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES: (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW CHILDREN, GUESTS OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY LAKE OR WATER BODY WITHIN THE PROPERTY, EXCEPT AS SPECIFICALLY PERMITTED BY THIS DECLARATION OR THE RULES AND REGULATIONS ADOPTED BY THE ASSOCIATION; (iii) DECLARANT, THE ASSOCIATION, THE COUNTY, AND THE OTHER LISTED PARTIES SHALL NOT BE LIABLE BUT, RATHER, SHALL BE HELD HARMLESS, FROM ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES; (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (v) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTY. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

8.4 Indemnification. Each Owner shall severally indemnify, defend and hold Declarant and the Association harmless from and against any and all costs, expenses, liabilities, fines, penalties and clean-up costs incurred by Declarant or the Association, as applicable, as a result of any damage or alteration to the Surface Water Management System caused by such Owner, or any unlawful discharge of such Owner into the Surface Water Management System. In the event any damage to the Surface Water Management System by an Owner is not reimbursed by such Owner upon demand, the Association shall, upon written request of Declarant or the Association, levy and assess an Individual Assessment against such Owner to cover the cost incurred by the Association or Declarant in correcting such damage, alteration or

unlawful discharge, and shall pay over the amount thereof to Declarant or the Association, as applicable.

ARTICLE 9

WETLAND & UPLAND CONSERVATION AREAS

9.1 Wetland & Upland Conservation Areas Maintenance and Protection. Portions of the Property may be designated and dedicated as Wetland & Upland Conservation Areas. Certain Lots may be adjacent to such Wetland & Upland Conservation Areas. The Wetland & Upland Conservation Areas may be described in any permits, plans, and ordinances issued by WMD, United States Army Corps of Engineers, the County, or any applicable governmental agencies (“Permits”). The Permits may set forth various use, protection, and other restrictions respecting the Property. The Association shall permit representatives of all appropriate governmental agencies to enter and monitor such portions of the Property upon reasonable notice. The costs of all maintenance expenses on such portions of the Property shall be assessed to the Members as a Common Expense in perpetuity.

9.2 Use Restriction for Wetland & Upland Conservation Areas. The Association acknowledges and shall enforce any use restrictions placed on any Wetland & Upland Conservation Areas. The Wetland & Upland Conservation Areas shall be the perpetual responsibility of the Association and may in no way be altered from their natural or permitted state. These use restrictions, if any, may be defined on the Permits, and the Plats associated with the Property. Activities prohibited within the Wetland & Upland Conservation Areas, except as otherwise permitted by the Association and if applicable the WMD, County, SCDHEC, United States Army Corps of Engineers, or other applicable governmental agency, include but are not limited to, the following:

9.2.1 Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

9.2.2 Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

9.2.3 Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a governmentally approved maintenance plan;

9.2.4 Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

9.2.5 Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;

9.2.6 Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

9.2.7 Acts or uses detrimental to retention of land or water areas;

9.2.8 Acts or uses which are detrimental to the preservation of any features or aspects of the Property having historical or archaeological significance;

9.2.9 No Owner within Cresswind at The Ponds may construct or maintain any building, residence, or structure, or undertake or perform any activity in the Wetland & Upland Conservation Areas described in the Permits and recorded Plat(s) of Cresswind at The Ponds, unless prior approval is received from the WMD, SCDHEC or other applicable governmental agency; and

9.2.10 Each Owner within Cresswind at The Ponds at the time of construction of a building, residence, or structure shall comply with the construction plans for the Surface Water Management System approved and on file with the WMD and/or SCDHEC.

ARTICLE 10

ADMINISTRATION

10.1 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

10.2 Control by Declarant. Except to the extent otherwise required by the provisions of the laws of South Carolina relating to nonprofit corporations, this Declaration, the Bylaws or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Owners. As provided in **Section 14.1** hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Property, Declarant shall have the right to appoint or remove any member or members of the Board of Directors and any officer or officers of the Association, without the necessity of a vote at an annual meeting, until the Class "B" membership terminates, which shall be upon the earlier of:

10.2.1 When ninety-five percent (95%) of the Units planned for Cresswind at The Ponds have been conveyed to Class "A" members; or

10.2.2 When, in its sole discretion, Declarant determines and declares in a recorded instrument.

Each Owner, by acceptance of a deed to or other conveyance of a Lot or Unit, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this **Section 10.2** and by **Section 14.1**.

10.3 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the laws of South Carolina relating to nonprofit corporations, this Declaration, the Bylaws and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the laws of South Carolina, this Declaration, the Bylaws or the Articles of Incorporation, the provisions of the laws of South Carolina, this Declaration, the Articles and the Bylaws, in that order, shall prevail, and each Owner of a Lot or Unit by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Notwithstanding the foregoing provisions of this **Section 10.3** or any other provision of this Declaration to the contrary, for so long as Declarant shall own any Lot or Unit, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage or hypothecate all or any portion of the Common Areas.

10.4 Agreements. Subject to the prior approval of Declarant for so long as Declarant owns a Lot or Unit, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors and assigns, and all others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing, and not in limitation thereof, the Association may obtain and pay for the services of any person or entity, including, without limitation, an entity affiliated with Declarant, to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Property whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of an Association manager shall be Common Expenses. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or Members of the Association by this Declaration or the Bylaws. Such manager may be an individual, corporation or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting and other professional or consulting services as are necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration, the Bylaws or the Rules and Regulations of the Association.

10.5 Insurance.

10.5.1 The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect property insurance, in such form as the Board

deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

10.5.2 The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its Members, Owners, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

10.5.3 The Board or its duly authorized agents shall have the authority and may obtain (i) workers' compensation insurance to the extent necessary to comply with any applicable laws and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

10.5.4 The Board or its duly authorized agents shall have the authority and may obtain officers' and directors' insurance, if available at reasonable cost, as determined by the Board of Directors in their sole and absolute discretion.

10.5.5 All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Property shall be vested in the Board of Directors; provided, however, that no Mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

10.5.6 It shall be the individual responsibility of each Owner at his or her own expense to provide public liability, property damage, title and other insurance with respect to his or her own Lot or Unit. The Board of Directors may require all Owners to carry public liability and property damage insurance with respect to their respective Lots and Units and to furnish copies or certificates thereof to the Association evidencing continuing coverage from time to time.

10.6 Personal Property and Real Property. The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The undivided interests of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner.

10.7 Rules and Regulations. As provided in **ARTICLE 13** hereof, the Association, through its Board of Directors, may make and enforce reasonable Rules and Regulations

governing the use of the Lots, Units, Common Areas, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration.

10.8 Indemnification. The Association shall indemnify and hold harmless every officer or director of the Association and member of the ARC and all other committees and subcommittees of the Association, against any and all expenses, including court costs and reasonable attorneys' fees, reasonably incurred by or imposed upon any current or former officer or director of the Association and member of the ARC in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors) to which he or she may be made a party by reason of being or having been an officer or director of the Association or member of the ARC. The officers or directors of the Association and members of the ARC shall not be liable for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Owners or Members of the Association), and the Association shall indemnify and forever hold each such officer, director and member of the ARC free and harmless, against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Association or member of the ARC, or former officer, director or member may be entitled. Such indemnification shall continue as to a person who has ceased to be a director, officer, member of the ARC, employee or agent, and shall inure to the benefit of the heirs and personal representatives of such a person. An adjudication of liability shall not affect the right to indemnification for those indemnified. The Association shall as a Common Expense maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

ARTICLE 11

ASSESSMENTS

11.1 Purpose of Assessments. The Assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, welfare, common benefit and enjoyment of the Owners and Occupants of the Property, and maintaining the Property and improvements therein, all as may be authorized in this Declaration, the Articles, the Bylaws and as may otherwise be determined from time to time by the Board of Directors.

11.2 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot or Unit by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments, such Assessments to be established and collected as provided in **Section 11.3** hereof; (ii) Special Assessments, such Assessments to be established and collected as provided in **Section 11.4** hereof; (iii) Individual Assessments against any particular Lot or Unit which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Lot or Unit in accordance with **ARTICLE 13** hereof; and (iv) any other Assessment. Any such Assessment, together with late charges, simple interest at the rate of eighteen percent (18%) per annum, and court costs, paraprofessional fees, and attorneys'

fees incurred to enforce or collect such Assessment, at all levels of proceedings including, without limitation, appeals, collections and bankruptcy, shall be an equitable charge and a continuing lien upon the Lot or Unit, the Owner of which is responsible for payment. The lien is effective from and after recording a Claim of Lien in the Public Records stating the legal description of the Lot or Unit, name of the Owner, and the amounts due as of that date, but shall relate back to the date that this Declaration is recorded. The Claim of Lien shall also cover any additional amounts which accrue thereafter until satisfied. Each Assessment, together with interest, late fees (in an amount not to exceed the greater of Fifteen Dollars (\$15) or ten percent (10%) of the Assessment), costs and reasonable attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, and other costs and expenses provided for herein, shall be the personal obligation of the person who was the Owner of the Lot or Unit at the time when the Assessment became due, as well as the Owner's heirs, devisees, personal representatives, successors or assigns.

Each Owner shall be personally liable for Assessments coming due while he or she is the Owner of a Lot or Unit, and his or her grantee shall take title to such Lot or Unit subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee therefor. Any purchaser of a Lot or Unit through a Foreclosure sale shall thereafter be subject to all future Assessments. In the event of co-ownership of any Lot or Unit, all of such co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, provided that unless otherwise provided by the Board, at any time and from time to time, the Annual Assessments shall be paid in one annual installment.

11.3 Computation of Annual Assessments. It shall be the duty of the Board at least ninety (90) days prior to the close of the Association's fiscal year to prepare a budget covering the estimated Common Expenses during the coming year. Notwithstanding the foregoing, the budget may cover a period of less than twelve (12) months if the first budget is adopted mid-year or in order to change the fiscal year of the Association. The Board shall cause the budget and the proposed total of the "Annual Assessments" to be levied against Lots and Units for the following year to be delivered in accordance with this Declaration to each Owner at least thirty (30) days, but not more than sixty (60) days prior to such meeting. The budget and the Annual Assessments shall become effective unless disapproved at the annual meeting by either (i) Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) a vote of a majority of the votes of the Association (provided that a minimum vote of fifty-one percent (51%) of all the votes of the Association shall be required to disapprove the budget). In the event the Common Expenses as estimated in the budget for a particular fiscal year are, after the actual Common Expenses for that period is known, less than the actual costs, then the difference shall, at the election of the Association: (i) be added to the calculation of Annual Assessments, as applicable, for the next ensuing fiscal year; or (ii) be immediately collected from the Owners as a Special Assessment. The Association shall have the unequivocal right to specially assess Owners retroactively on January 1st of any year for any shortfall in Annual Assessments, which Special Assessment shall relate back to the date that the Annual Assessments could have been made. No vote of the Owners shall be required for such Special Assessment (or for any other Assessment) except to the extent specifically provided herein.

Except as provided in **Section 11.9**, each Lot and Unit shall be subject to Annual Assessments divided equally among every Lot and Unit. Any allocated or shared cost or expense will be allocated as determined by the Association, which prior to the Community Completion Date must be approved by Declarant, and the determination by the Association will be dispositive. In the event of any dispute between or among Owners as to the propriety or amount of any expense incurred by the Association or one or more Owners for (or purportedly for) the benefit of such Owner(s) and one or more other Owners, and/or the proper amount of such expense to be allocated to each benefited Owner, and/or the identity of the Owners benefited by such cost or expense, such dispute may be referred to the Association by any party to the dispute, and the decision of the Association with respect to such dispute will be dispositive and binding upon all Owners and other persons or entities affected thereby. Notwithstanding the foregoing, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year subject to a maximum five percent (5%) increase in each line item of the preceding year's budget. THE INITIAL BUDGET OF THE ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES). THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESSER OR GREATER THAN PROJECTED.

The budget must include those items set forth in the Bylaws and may include, without limitation, the following listed line items:

11.3.1 All expenses necessary to meet the Association's responsibility to maintain the Common Areas in accordance with the requirements of this Declaration. Including, by way of illustration and not as limitation, such Common Areas expenses as: maintenance of the Surface Water Management System, irrigating, grass cutting, trimming, fertilizing, pest control, and the like, in a manner consistent with the Community Standards.

11.3.2 All charges levied for utility services to the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, electricity, telephone, sewer, septic, cable television, and any other type of utility or service charge.

11.3.3 The premiums on any policy or policies of insurance required under this Declaration, together with the costs of such other policies of insurance as the Board shall determine to be in the best interest of the Association.

11.3.4 The costs of administration for the Association, including any secretaries, bookkeepers, and other employees necessary to carry out the obligations and covenants of the Association under this Declaration, including the collection of sums owed by a particular Lot or Unit. In addition, the Association may retain a managing company or contractors to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company or contractor so retained shall be deemed to be part of the Association's expense.

11.3.5 The costs of any Community Control Program.

11.3.6 All taxes levied or assessed upon the Common Areas by any and all taxing authorities, including all taxes, charges and assessments, impositions and liens for public improvements, special charges and assessments; and, in general, all taxes on personal property and improvements which are now and which hereinafter may be placed in the Common Areas, including any interest penalties and other charges which may accrue on such taxes.

11.3.7 All off property maintenance, including, without limitation, median landscaping, as required by the Development Order, the County or other governmental authority.

11.3.8 Any charges, including, without limitation, sales tax, for alarm services provided to Units ("Bulk Alarm Assessments"). Notwithstanding the foregoing, all equipment and related items to Bulk Alarm Assessments shall be maintenance expenses of each Owner.

11.3.9 Any charges, including, without limitation, sales tax and franchise fees, for cable services provided to Units ("Bulk Cable Assessments").

11.4 Special Assessments. In addition to the Annual Assessments authorized above, the Association, acting through its Board of Directors, may levy, in any Assessment year, "Special Assessments" for Common Expenses, applicable to that year only, provided that any such Special Assessment shall be approved by (i) Declarant, for so long as Declarant owns any Lot or Unit and (ii) by a majority of the votes of the Members who are voting at a meeting duly called for this purpose. The Board of Directors may make such special Assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted.

11.5 Individual Assessments. Any expenses of the Association arising out of either or both of the following events shall be specially assessed against the appropriate Owner(s) and their respective Lots or Units: (i) any expenses occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner; and (ii) any expenses arising out of the provision by the Association or Declarant of maintenance service under **Section 6.1**. By way of example, and not of limitation, all of the Owners within a Plat may be subject to "Individual Assessments" for maintenance, repair and/or replacement of facilities serving only the residents of such Plat. Further, in the event a an Owner fails to maintain the exterior of his or its Unit in a manner satisfactory to the Association, the Association shall have the right, through its agents and employees, to enter upon the Unit and to repair, restore, and maintain the Unit as required by this Declaration. The cost thereof, plus the reasonable administrative expenses of the Association, shall be an Individual Assessment. Individual Assessments may also include, fines assessed as set forth in **ARTICLE 13** hereof and costs if one or more Owners receive optional Telecommunications Services such as Toll Calls, Basic Service, Expanded Basic Service, Premium Channels, and/or Data Transmission Services, and the Association pays a Telecommunications Provider for such services, then the cost of such services shall be an Individual Assessment as to each Owner receiving such services. The Individual Assessments provided for in this **Section 11.5** shall be levied by the Board of Directors and the amount and due date of such Assessments so levied by the Board shall be as specified by the Board. The lien for an Individual Assessment may be foreclosed in the same manner as any other Assessment,

except that any Individual Assessments for fines shall be a personal obligation and not a lien against a Lot or Unit.

11.6 Liens. All sums assessed against any Lot or Unit pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Unit in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot or Unit except only for (i) liens of ad valorem taxes, (ii) liens for all sums unpaid on a first priority Institutional Mortgage or on any Mortgage to Declarant or its affiliates, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of Assessments to the lien of such Mortgages shall only apply to such Assessments which have become due and payable prior to a Foreclosure. All other persons acquiring liens or encumbrances on any Lot or Unit after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for Assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

11.7 Effect of Nonpayment; Remedies of the Association.

11.7.1 Any Assessment of an Owner or any portion thereof which is not paid when due shall be delinquent. Any Assessment delinquent for a period of more than thirty (30) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. A lien and equitable charge as herein provided for each Assessment shall attach simultaneously as the same shall become due and payable, and if any installment of the Assessment for such year has not been paid within thirty (30) days, the entire unpaid balance of the Assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment shall include the late charge (in an amount not to exceed the greater of Fifteen Dollars (\$15) or ten percent (10%) of the Assessment) established by the Board of Directors, interest on the principal amount due at the rate of eighteen percent (18%) per annum, all costs of collection (including reasonable attorneys' fees, paraprofessional fees, and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the Assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot or Unit, vests in the Association and its agents the right and power to bring all actions against him or it personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot or Unit at any Foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

11.7.2 No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot or Unit, and an Owner shall remain personally

liable for Assessments, interest and late charges which accrue prior to a sale, transfer or other conveyance of his or its Lot or Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of the County or other governmental authority.

11.8 Certificate. The treasurer or any assistant treasurer shall, within ten (10) days of a written request and upon payment of such fee as is from time to time reasonably determined by the Board of Directors, furnish to any Owner which requests the same, a certificate in writing signed by said treasurer or assistant treasurer, setting forth whether the Assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. As to parties without knowledge of error who rely thereon, such certificate shall be presumptive evidence against all but such Owner of payment of any Assessments stated therein to have been paid.

11.9 Date of Commencement of Annual Assessments; Declarant's Rights and Obligations. The Annual Assessments provided for herein shall commence as to each Lot and Unit on the day on which such Lot or Unit is conveyed to a person other than Declarant and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Anything contained herein to the contrary notwithstanding, Declarant shall not be responsible for the payment of Annual, Individual or Special Assessments on Lots or Units which it owns. For so long as Declarant has the authority hereunder to appoint and remove directors of the Association, Declarant shall have the option to either pay Annual Assessments on Lots and Units owned by Declarant or fund any deficit which may exist between (i) the total amount of Assessments levied on all Lots or Units not owned by Declarant and (ii) the actual expenditures required to operate the Association during the fiscal year (not including the funding of any reserves); provided, however, that the annual budget, Assessments, and deficits, if any, shall be annually reviewed by Declarant and the Board of Directors, and during such period Declarant's obligation for funding deficits shall only be up to the amount of the Association's budget. Any surplus in funds held by or due to the Association shall be carried over from year to year so as to reduce Declarant's obligation to pay Assessments, and Declarant shall have no obligation to fund reserves if the Board of Directors creates such reserves. Upon Declarant no longer having the authority to appoint directors or officers of the Association, Declarant shall be obligated only to pay Assessments on Lots and Units owned by Declarant and shall have no obligation to fund any deficit as set forth above. Notwithstanding anything to the contrary contained herein, so long as Declarant controls the Association pursuant to **Sections 10.2 and 14.1**, Declarant shall have the right in its sole and absolute discretion to change the Assessments attributable to any portion of the Property at any time and from time to time, and Declarant shall have the additional right to designate portions of the Property to be exempt from assessment under this **ARTICLE 11**. Declarant's obligation hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or

materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Assessments.

11.10 Common Areas and Certain Other Property. Unless otherwise provided herein, no Common Areas hereunder shall be subject to assessment hereunder. Further, the foregoing exemption shall apply to any land owned by a public agency as long as such land is used for public purposes. In the event of any ambiguity or doubt as to whether any particular open space or other land is subject to assessment, the determination of Declarant shall be final and conclusive.

11.11 Capital Contributions. The initial purchaser of each Lot or Unit from Declarant, at the time of closing of the conveyance from Declarant to the purchaser, shall pay to Declarant an initial capital contribution in an amount equal to two (2) months' Assessments (or such other amount as established by Declarant from time to time) (the "Initial Capital Contribution"). The funds derived from the Initial Capital Contributions shall be used at the discretion of Declarant for any purpose, including but not limited to, future and existing capital improvements, operating expenses, support costs and start-up costs. Upon each and every subsequent acquisition of record title to a Lot from the initial Owner (other than Declarant), such new Owner will contribute to the capital of the Association an amount equal to one-fourth (1/4) of the amount of the Assessment determined by the Board of Directors for the Lot for the year in which the new Owner acquired title ("Capital Contributions"). Such Capital Contributions shall be used to establish adequate reserve funds for replacement and/or capital refurbishment of the Common Areas, Surface Water Management System and the portions of Lots or Units which the Association is responsible for maintaining and the payment of other expenses in the amounts determined proper and sufficient by the Board, if any. Each Owner acknowledges and understands that Capital Contributions are the exclusive property of the Association as a whole, and that no Owner shall have any interest, claim or right to any such Capital Contributions or funds composed of the same. The Association shall be responsible for maintaining the Capital Contribution in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.

11.12 Use of Reserves. Any reserve funds established by the Association from time to time, whether funded from Annual Assessments or from Capital Contributions shall be used only for the purpose originally reserved for in the Association budget and may not be used by the Association for any other purpose, unless such other purpose is approved by a 75% vote of all votes in the Association. Notwithstanding the foregoing, the Board of Directors of the Association shall have the authority to utilize up to 20% of the amount reserved in any particular reserve fund for another capital purpose without the vote or the approval of the Members. For example, the Board of Directors would have authority to use up to 20% of the amounts reserved for road repairs for a drainage repair without requiring a vote of the Members. However, the Board of Directors shall not have the authority to use the reserve funds for Common Expenses, or for any other purpose except upon the required vote of the Members of the Association.

11.13 Master Association Assessments. Each Owner shall be personally liable for all assessments levied against their Unit by the Master Association (the "Master Association Assessments") while he or she is the Owner of a Unit, and his or her grantee shall take title to such Unit subject to the equitable charge and continuing lien therefor. Upon request by the

Master Association, the Association shall have the power and authority to collect from Owners The Master Association Assessments. In such event, the Master Association Assessments shall be collected by the Association pursuant to the procedures set forth in this **Section 14**. If the Master Association Assessments are not paid on the date when due, the provisions of the Master Declaration as to the effect of non-payment of Master Assessments, including the Master Association's lien rights, shall fully apply. The Master Assessments shall be in addition to, and not in lieu of, the Assessments and other charges levied by the Association. The rights granted to the Association by this Section shall be in addition to, and not in lieu of, those rights granted to the Association by the Master Declaration.

11.14 Community Enhancement Fee. Each Owner shall be personally liable for the Community Enhancement Fee payable to the Conservancy in accordance with the terms of the Master Declaration.

11.15 Assessment Estoppel Certificates. No Owner shall sell or convey its interest in a Unit unless all sums due the Association have been paid in full and an estoppel certificate in recordable form shall have been received by such Owner. The Association shall prepare and maintain a ledger noting Assessments due from each Owner. The ledger shall be kept in the office of the Association, or its designees, and shall be open to inspection by Owner. Within ten (10) days of a written request therefor, there shall be furnished to an Owner an estoppel certificate in writing setting forth whether the Assessments have been paid and/or the amount which is due as of any date. As to parties other than Owners who, without knowledge of error, rely on the certificate, the certificate shall be conclusive evidence of the amount of any Assessment therein stated. The Owner requesting the estoppel certificate shall be required to pay the Association a reasonable sum to cover the costs of examining records and preparing such estoppel certificate. Each Owner waives its rights (if any) to an accounting related to the Association expenses or Assessments.

11.16 Payment of Real Estate Taxes. Each Owner shall pay all taxes and obligations relating to its Lot or Unit which, if not paid, could become a lien against the Lot or Unit which is superior to the lien for Assessments created by this Declaration.

11.17 Collection by Declarant. If for any reason the Association shall fail or be unable to levy or collect Assessments, then in that event, Declarant shall at all times have the right, but not the obligation: (i) to advance such sums as a loan to the Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, which remedies; including, but not limited to, recovery of attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, shall be deemed assigned to Declarant for such purposes. If Declarant advances sums, it shall be entitled to immediate reimbursement, on demand, from the Association for such amounts so paid, plus interest thereon at the Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection including, but not limited to, reasonable attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy.

11.18 Rights to Pay Assessments and Receive Reimbursement. The Association, Declarant and any Mortgagee of a Unit shall have the right, but not the obligation, jointly and

severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Unit. If so paid, the party paying the same shall be subrogated to the enforcement rights of the Association with regard to the amounts due.

11.19 Mortgagee Right. Each Mortgagee may request in writing that the Association notify such Mortgagee of any default of the Owner of the Unit subject to the Mortgagee's Mortgage under the Association Documents which default is not cured within thirty (30) days after the Association learns of such default. A failure by the Association to furnish notice to any Mortgagee shall not result in liability of the Association because such notice is given as a courtesy to a Mortgagee and the furnishing of such notice is not an obligation of the Association to Mortgagee.

11.20 Exemption. Notwithstanding anything to the contrary herein, neither Declarant nor any Unit or property owned by Declarant shall (unless specified to the contrary by Declarant in a separate written instrument) be responsible for any Assessments of any nature or any portion of the Association expenses. Declarant, at Declarant's sole option, may pay Assessments on Units owned by it.

ARTICLE 12

ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

12.1 Purpose. In order to preserve the natural setting and beauty of the Property, to establish and preserve a harmonious and aesthetically pleasing design for the Property, and to protect and promote the value of the Property, the Lots, Units and any and all improvements located therein or thereon shall be subject to the restrictions set forth in this **ARTICLE 12**. Every grantee of any interest in a Lot or Unit, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this **ARTICLE 12**.

12.2 Restrictions Applicable to Buildings and Other Improvements.

12.2.1 **Architectural Review Committee**.

12.2.1.1 The ARC shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions relating to Cresswind at The Ponds. The ARC shall consist of a minimum of three (3) members who shall initially be named by Declarant and who shall hold office at the pleasure of Declarant. One of the members of the ARC may be a paid consultant, i.e. an architect, at Declarant's option. Until the Community Completion Date, Declarant shall have the right to change the number of members on the ARC, and to appoint, remove, and replace all members of the ARC. Prior to the Community Completion Date, any members appointed by Declarant do not have to be Owners. Declarant shall determine which members of the ARC shall serve as its chairman and co-chairman. In the event of the failure, refusal, or inability to act of any of the members appointed by Declarant, Declarant shall have the right to replace any member within thirty (30) days of such occurrence. If Declarant fails to replace that member, the remaining members of the ARC

shall fill the vacancy by appointment. From and after the Community Completion Date, the Board shall have the same rights as Declarant with respect to the ARC.

12.2.1.2 A majority of the members of the ARC shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter before it. In lieu of a meeting, the ARC may act in writing.

12.2.1.3 The ARC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Each member of the ARC may be paid a stipend or honorarium as from time to time determined by the Board. The ARC may establish fees sufficient to cover the expenses of reviewing applications, plans and related data, and to compensate any consulting architects, landscape architects, urban designers, inspectors or attorneys retained in accordance with the terms hereof.

12.2.1.4 Requirement of Architectural Review; Community Standards; Delegation of Authority.

12.2.1.5 No Unit or other improvements of any nature whatsoever shall be constructed, altered, added to or maintained upon any part of the Property, except for (i) Units and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the ARC in accordance with this **ARTICLE 12**, or (iii) improvements which pursuant to this **ARTICLE 12** do not require the consent of the ARC.

12.2.1.6 The ARC is hereby authorized to promulgate from time to time written architectural standards, policies and guidelines (the "Community Standards") governing the construction, location, color, landscaping and design of improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to **Section 12.2**. Any such Community Standards published by the ARC shall be binding and enforceable on all Owners and their contractors and employees with respect to all improvements in the Property requiring the approval of the ARC. The Community Standards shall be effective from the day of adoption; shall be specifically enforceable by injunction or otherwise; and shall have the effect of covenants as if set forth herein verbatim. Until the Community Completion Date, Declarant shall have the right to approve the Community Standards, which approval may be granted in its sole discretion.

12.2.2 **Construction of Improvements.** No Unit may be temporarily or permanently occupied until the exteriors thereof and the landscaping of the Lot on which the Unit is located have been completed, and a certificate of occupancy for such Unit has been issued. No temporary house, shack, tent, or other outbuilding shall be permitted on any Lot at any time. During the continuance of construction by an Owner, such Owner shall require its contractors to maintain the Lot and Unit in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers, and the construction site shall be kept secure by the use of temporary fences during construction. Upon completion of construction, such Owner shall cause its contractors to immediately remove all

equipment, tools and construction material and debris from the Lot or Unit which such construction has been completed.

12.2.3 Architectural Approval. To preserve the architectural and aesthetic appearance of the Property, no construction or demolition of any Unit or other improvements of any nature whatsoever shall be commenced or maintained by any Owner, other than Declarant, with respect to the construction or demolition or affecting the exterior appearance of any Unit or with respect to any other portion of the Property, including, without limitation, the construction, installation or demolition of sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, awnings, swimming pools, tennis courts, greenhouses, playhouses, doghouses, walls, fences, exterior lighting, recreational facilities, or other buildings, unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing by the ARC as to the compliance of such plans and specifications with such Community Standards as may be published by the ARC from time to time. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within its Unit that do not affect the exterior appearance, without the necessity of approval or review by the ARC. The ARC shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. Following approval of any plans and specifications by the ARC, representatives of the ARC shall have the right during reasonable hours to enter upon and inspect any Lot, Unit, or other improvements with respect to which construction or demolition is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the ARC shall determine that such plans and specifications have not been approved or are not being complied with, the ARC shall be entitled to enjoin further construction or demolition and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the ARC fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) days after such plans and specifications and all other materials with respect thereto as the ARC may request, shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with the scheme of the Property as set forth in this Declaration. Refusal of approval of plans and specifications may be based by the ARC upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

12.2.4 Landscaping Approval. To preserve the aesthetic appearance of the Property, no landscaping, clearing, grading, excavation or filling of any nature whatsoever shall be implemented and installed by any Owner, other than Declarant, unless and until the plans therefor have been submitted to and approved in writing by the ARC. The provisions of **Section 12.2.3** regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc., shall also be applicable to any proposed landscaping, clearing, grading, excavation or filling. No Owner, other than Declarant, shall be entitled to cut, remove or mutilate any trees, shrubs, bushes or other vegetation having a trunk diameter of four (4) inches or more at any point above ground level, without obtaining the prior approval of the ARC, except as set forth in the preceding sentence, and provided further that dead or diseased shrubs, bushes or other vegetation,

shall be cut and removed promptly from any Lot or Unit by the Owner of such Lot or Unit and shall be promptly replaced with similar shrubs, bushes or vegetation.

12.2.5 **Construction.** Each Owner shall deliver to the ARC copies of all construction and building permits as and when received by the Owner. Each construction site in Cresswind at The Ponds shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, workmanlike and continuous basis. Roads, drainage areas, Wetland & Upland Conservation Areas, easements, swales, Common Area and other such areas in Cresswind at The Ponds shall be kept clear of vehicles, construction materials and debris at all times. No construction office or trailer shall be kept in Cresswind at The Ponds and no construction materials shall be stored in Cresswind at The Ponds subject, however, to such conditions and requirements as may be promulgated by the ARC. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any waterbody or Common area or other Units in Cresswind at The Ponds or be placed anywhere outside of the Unit upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state and local statutes, regulations and ordinances, and shall not be deposited in any manner on, in or within the construction or adjacent property or waterbodies. All construction activities shall comply with the Community Standards. If a contractor or Owner shall fail in any regard to comply with the requirements of this Section, the ARC may require that such contractors, or Owners post security with the Association in such form and amount deemed appropriate by the ARC in its sole discretion.

12.2.6 **Compliance.** Each Owner is responsible for insuring compliance with all terms and conditions of these provisions and of the Community Standards by all of its employees and contractors. In the event of any violation of any such terms or conditions by any employee, contractor, or, in the opinion of the ARC, the continued refusal of any employee or contractor to comply with such terms and conditions, after five (5) days' notice and right to cure, the ARC shall have, in addition to the other rights hereunder, the right to prohibit the violating employee or contractor from performing any further services in Cresswind at The Ponds.

12.2.7 **Common Area Damage.** If during any construction activity on a Lot, or at any other time, any of the Common Area is damaged or destroyed, including without limitation, any street light sidewalks, landscaping or street signs located thereon, the Owner of such Unit shall be liable for costs incurred in repairing or replacing such Common Area and the total costs thereof shall be assessed against the Owner as an Individual Assessment. The Association reserves the right to collect from Owners or contractors a security deposit that may be applied to reduce damages to the Common Areas which might occur during the construction of a Unit.

12.2.8 **Conduct.** The ARC may, from time to time, adopt standards governing the performance or conduct of Owners, contractors and their respective employees within Cresswind at The Ponds. Each Owner and contractor shall comply with such standards and cause its respective employees to also comply with same.

12.2.9 **Violation.** If any improvement shall be constructed or altered without prior written approval, or in a manner which fails to conform with the approval granted, or a Lot or improvement is maintained in violation of this Declaration or the Community Standards, the Owner shall, upon demand of the Association or the ARC, cause such improvement to be removed, or restored until approval is obtained or in order to comply with the plans and specifications originally approved, or such Lot or improvement maintained in compliance with this Declaration or the Community Standards. The Owner shall be liable for the payment of all costs of removal, restoration, or maintenance, including all costs and attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, incurred by the Association or the ARC. The costs shall be deemed an Individual Assessment and enforceable pursuant to the provisions of this Declaration. The ARC and/or the Association is specifically empowered to enforce the architectural and landscaping provisions of this Declaration and the Community Standards, by any legal or equitable remedy. In the event that the Association or ARC shall cite an Owner for a violation, the Owner may request a hearing for review of the fine or citation before a committee of the ARC established for such purpose (the "Violations Committee"). The Violations Committee shall have the power to investigate alleged violations and hold hearings with regard to same, according to such procedures as shall be promulgated by the Violations Committee. Any decision by the Violations Committee shall be final and binding upon the Owner, the ARC and the Association.

12.2.10 **Court Costs.** In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed improvement or to cause the removal of any unapproved improvement, the Association and/or ARC shall be entitled to recover court costs, expenses and attorneys' fees and paraprofessional fees at all levels, including appeals, collections and bankruptcy, in connection therewith.

12.2.11 **Certificate.** In the event that any Owner fails to comply with the provisions contained herein, the Community Standards, or other rules and regulations promulgated by the ARC, the Association and/or ARC may, in addition to all other remedies contained herein, record a Certificate of Non-Compliance against the Unit stating that the improvements on the Unit fail to meet the requirements of this Declaration and that the Unit is subject to further enforcement remedies.

12.2.12 **Certificate of Compliance.** Prior to the occupancy of any improvement constructed or erected on any Lot by other than Declarant, or its designees, the Owner thereof shall obtain a Certificate of Compliance from the ARC, certifying that the Owner has complied with the requirements set forth herein. The ARC may, from time to time, delegate to a member or members of the ARC, the responsibility for issuing the Certificate of Compliance.

12.2.13 **Exemption.** Notwithstanding anything to the contrary contained herein, or in the Community Standards, any improvements of any nature made or to be made by Declarant or its nominee, including, without limitation, improvements made or to be made to the Common Area or any Unit, shall not be subject to the review of the ARC, the Association, or the provisions of the Community Standards.

12.2.14 **Disclaimer as to Architectural Review Committee; Approval Not Guarantee.** NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF COMMUNITY STANDARDS SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS OR COMMUNITY STANDARDS WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED OR CONSTRUCTED IMPROVEMENTS. SUCH APPROVALS AND COMMUNITY STANDARDS SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENTIAL UNIT OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. NEITHER DECLARANT, THE ASSOCIATION NOR THE ARC SHALL BE RESPONSIBLE OR LIABLE FOR ANY DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED PURSUANT TO THE TERMS OF THIS **ARTICLE 12**, ANY LOSS OR DAMAGE TO ANY PERSON ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF ANY PLANS OR SPECIFICATIONS, ANY LOSS OR DAMAGE ARISING FROM THE NONCOMPLIANCE OF SUCH PLANS AND SPECIFICATIONS WITH ANY GOVERNMENTAL ORDINANCES AND REGULATIONS, OR ANY DEFECTS IN CONSTRUCTION UNDERTAKEN PURSUANT TO SUCH PLANS AND SPECIFICATIONS.

12.2.15 **Building Restrictions.** All buildings and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions and any applicable regulations and restrictions of applicable governmental agencies.

12.2.16 **Service Yards.** Each Owner of a Lot or Unit shall provide visually-screened areas to serve as service yards in which garbage receptacles, wood piles, gas and electric meters, pool equipment, air conditioning equipment and other outdoor equipment shall be located. Vehicles, materials, supplies and equipment which are stored outside by Owners must be placed or stored in order to conceal them from view from roads and adjacent properties. Any such visual barrier shall consist of fencing, landscaping or planting and shall be at a height and type which is approved by the ARC in accordance with the terms of this **ARTICLE 12**.

12.2.17 **Exterior Appearance.** All fences shall be subject to the Community Standards published by the ARC and shall be approved by the ARC prior to installation. Further, no foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or other purpose, nor shall any window-mounted heating or air-conditioning units be permitted without the approval of the ARC. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained unless screened completely from view on all sides from all adjoining properties and Common Areas, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall. No projections of any type shall be placed or permitted to remain above the roof of any improvement except approved chimneys or vent stacks.

12.2.18 **Signs.** Except as may be required by any applicable law, no signs, flags, banners or advertising posters of any kind shall be maintained or permitted within any windows, on the exterior of any improvements located within the Property, or elsewhere on any

portion of the Property, without the express written permission of the ARC. The ARC may establish reasonable restrictions regarding the display of the American flag. Under no circumstances shall "Garage Sale", "Estate Sale", "Yard Sale" or other related signs be permitted within Cresswind at The Ponds and no "For Sale" or "Open House" signs shall be permitted within Cresswind at The Ponds except as permitted under applicable law. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the ARC and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section shall not apply to Declarant. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas and within those easement areas established in **Section 7.7**.

12.2.19 Satellite Dishes and Antennae. No exterior visible antennae, radio masts, towers, poles, aerials, satellite dishes, or other similar equipment shall be placed on any Unit or Lot without the prior written approval thereof being first had and obtained from the ARC as required by this Declaration. The ARC may require, among other things, that all such improvements be screened so that they are not visible from adjacent Units, or from the Common Areas. Each Owner agrees that the location of such items must be first approved by the ARC in order to address the welfare of the residents of Cresswind at The Ponds. No Owner shall operate any equipment or device which will interfere with the radio or television reception of others. All antennas not covered by the Federal Communications Commission ("**FCC**") rules are prohibited. Installation, maintenance, and use of all antennas shall comply with restrictions adopted by the Board and shall be governed by the then current rules of the FCC.

12.2.20 Additional Items Requiring the Prior Approval of the ARC. Without in any matter limiting the generality of any other provision in **Section 12.2**, the following items must be approved in advance by the ARC:

12.2.20.1 Basketball hoops and backboards (all basketball hoops shall be of temporary, rollaway design and shall be removed at night and stored inside the garage of a Unit).

12.2.20.2 All flagpoles and other similar items;

12.2.20.3 Lawn ornaments, exterior sculpture, fountains and other similar items;

12.2.20.4 Mailboxes, paper boxes or other receptacles of any kind for use in the delivery of mail, newspapers, magazines or similar material;

12.2.20.5 Swimming pools and tennis courts;

12.2.20.6 Bicycle racks or stands;

12.2.20.7 Play equipment, unless screened completely from view on all sides from all adjoining properties, including, without limitation, swing sets, tree houses and sandboxes; and

12.2.20.8 Outdoor lighting.

12.3 General Restrictions.

12.3.1 **Septic System.** No septic tank may be installed on any Lot.

12.3.2 **Lot Irrigation.** Declarant will install an irrigation system, a surface water and/or effluent irrigation system or a well water irrigation system serving each Lot and the Common Areas. Every Lot and the Common Areas must participate in the use of such irrigation systems. Except for sprinkler or irrigation systems installed by Declarant, no sprinkler or irrigation systems of any type which draw water from lakes, rivers, ponds, canals or other surface waters within the Property shall be installed, constructed or operated within the Property unless prior written approval from the Board has been obtained. Each Owner shall maintain the irrigation system on his Lot in accordance with **Section 6.1** hereof. Before the Board approves the installation of any alterations or improvements to a Lot that in any way affect the irrigation system, the irrigation system that will be within the improvement portion of that Lot must be rerouted, if necessary, by a professional irrigation company. In order for the Board to approve the improvement installation, a letter or other evidence by a professional irrigation company must be given to the Board at least ten (10) days before the improvement installation stating that the effectiveness of the Cresswind at The Ponds drainage system will not be affected by the rerouting of the irrigation system. Should an Owner install the improvement without providing the necessary letter or other evidence from a professional irrigation company in advance as required herein, then, upon reasonable notice to the Owner, the Association may enter the Lot and conduct the necessary inspection, repair any necessary drainage facilities and the costs of such work, together with interest thereon, may be charged to the Owner and, as charged, shall become a lien on the Lot.

12.3.3 **Nuisances.** No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Property, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of the Property. Noxious or offensive activities shall not be carried on in any Lot or Unit or in any part of the Common Areas, and each Owner, his or her family, tenants, guests, invitees, servants and guests shall refrain from any act or use of a Lot or Unit or of the Common Areas which could cause disorderly, unsightly or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the Occupants of other portions of the Property, or which could result in a cancellation of any insurance for any portion of the Property, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Property without permission by the Board of Directors of the Association, which may establish restrictions on the time, place and manner of such use. Any Owner, or his or her family, tenants, guests, invitees, servants or agents who dumps or places any trash or debris upon any portion of the Property shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added

to and become a part of that portion of any Assessment next becoming due to which such Owner and his or her Lot or Unit are subject.

12.3.4 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Declarant and its agents and employees shall have the right to maintain on Declarant's Property and Common Areas and carry on such facilities and activities as may be reasonably required, convenient or incidental to the completion, improvement and sale and resale of Lots and/or Units or the developing of Lots, Units, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers, offices, signs and model Units, all as may be approved by Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarant's rights under this **Section 12.3.4** shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units as model residences, and to use any Unit as an office for the sale and resale of Lots and/or Units and for related activities.

12.3.5 Traffic Regulations. All vehicular traffic on the streets and roads in the Property shall be subject to the provisions of the laws of the State of South Carolina, the County concerning operation of motor vehicles on public streets. THE ASSOCIATION IS HEREBY AUTHORIZED TO PROMULGATE, ADMINISTER AND ENFORCE REASONABLE RULES AND REGULATIONS GOVERNING VEHICULAR AND PEDESTRIAN TRAFFIC, INCLUDING REASONABLE SAFETY MEASURES AND SPEED LIMITS AND MODIFICATIONS OF THOSE IN FORCE ON ANY STREETS WITHIN THE PROPERTY. THE ASSOCIATION SHALL BE ENTITLED TO ENFORCE SAME BY ESTABLISHING SUCH ENFORCEMENT PROCEDURES AS IT DEEMS APPROPRIATE, INCLUDING LEVYING FINES FOR THE VIOLATION THEREOF. In the event of a conflict between such provisions of the laws of the State of South Carolina, the County and such Rules and Regulations promulgated by the Association, the Association may enforce the strictest provisions. Only drivers licensed to operate motor vehicles by the State of South Carolina or by any other state in the United States may operate any type of motor vehicle on any street or Common Areas within the Property. All vehicles of any kind and nature which are operated on the streets in the Property shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Property.

12.3.6 Restrictions on Use of Additional Property. As Additional Property, including Common Areas, is subjected to this Declaration in accordance with **Section 2.2** hereof, Declarant shall have the absolute right to change, amend or alter the use restrictions set forth in this **ARTICLE 12**, as applicable to the Additional Property, and to add additional use restrictions for such Additional Property as deemed necessary or appropriate by Declarant, in its sole and absolute discretion. Such use restrictions on Additional Property, notwithstanding anything to the contrary contained herein, may be either more or less restrictive than the restrictions contained herein.

12.3.7 Boat Docks and Use of Water Bodies. No docks, bulkheads, moorings, pilings, boathouses or boat shelters of any kind may be erected on any part of the Property, including without limitation any lakes and waterways within the Property, except for

those constructed by Declarant or the Association. All Wetland & Upland Conservation Areas within the Property shall be left in their natural state and no alteration thereof or construction thereon shall be permitted. No motorized boats shall be operated in any lakes or canals within the Property. All uses of the lakes, and canals within the Property, including without limitation fishing, boating, swimming, playing or the use of personal flotation devices, shall be permitted only as provided in any Rules and Regulations promulgated by Declarant or the Association. Declarant and the Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes or canals within the Property.

12.3.8 Compliance with the Development Order. Subject to the terms of **Section 6.2** hereof, the Property and each Lot and Unit shall be owned and maintained in a manner so as not to violate the applicable terms of the Development Order. Declarant and the Association shall be severally indemnified, defended and held harmless by each Owner for all losses, damages (compensatory, consequential, punitive or otherwise) or claims arising from or relating to the failure by such Owner to comply with the terms of the Development Order.

12.3.9 Hazardous Materials. No reportable quantities of hazardous materials shall be used or stored at the Property.

12.3.10 Mining and Excavation. No oil, gas, mineral or other type of mining, excavating, drilling, refining, quarrying or other similar activities of any kind shall be conducted on the Property. The terms of this Section shall not apply to Declarant or the Association.

12.3.11 Parking and Off-Street Motor Vehicles. Vehicles shall be parked only in the garages or in the driveways serving the Units or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to the reasonable Rules and Regulations adopted by the Association. No repair, except emergency repair, of vehicles shall be made within Cresswind at The Ponds, except in the garage of a Unit. In the event a vehicle is parked in a driveway servicing a Unit, such vehicle must be completely within the boundaries of such driveway space and no part of the vehicle may extend outside the driveway space. No "commercial vehicle" (as such term is defined in the County code in effect on the date of recordation of this Declaration): (i) shall be permitted to be parked in Cresswind at The Ponds for a period of more than four (4) hours per day unless such commercial vehicle is temporarily present and necessary in the actual construction, maintenance, or repair of a Unit or other improvements in Cresswind at The Ponds or (ii) shall be permitted to be parked overnight or stored in Cresswind at The Ponds unless fully enclosed within a garage. No recreational vehicle of any kind shall be parked overnight in Cresswind at The Ponds, and no boats, boat trailers, trailers of any kind, campers, motor homes, mobile homes or buses shall be permitted to be parked in Cresswind at The Ponds unless kept fully enclosed within a garage. No vehicle shall be used as a domicile or residence, either temporary or permanent. In the event any vehicle is improperly parked in Cresswind at The Ponds in violation of this **Section 12.3.11**, the Association (or at the Association's direction a towing company) may enter the Lot or Common Areas and remove the vehicle and assess all costs incurred by the Association for such removal against the Unit and the Owner responsible for the parking of the vehicle in Cresswind at The Ponds, and such assessment shall become a lien on the Lot.

12.3.12 **Vehicles.** Except as needed for construction and maintenance by Declarant or the Association, no motorized vehicle may be operated off of paved roads or streets.

12.3.13 **Sales Activities.** No sales activities relating to any portion of the Property shall be conducted on the Property. Except as may be required by any applicable law, no sign of any nature or type whatsoever, including without limitation “for rent” or “for sale” signs, shall be displayed or placed on any part of the Property without the prior approval of the ARC, if required. The terms of this **Section 12.3.13** shall not apply to Declarant.

12.3.14 **Age Restrictions (Adult Housing).**

12.3.14.1 General. Units are intended for the housing of persons 55 years of age or older. The provisions of this Section are intended to be consistent with and are set forth in order to comply with the Federal Fair Housing Amendments Act, 42 U.S.C. §3601, et. al. (1988), and the exemption therefrom provided by the Housing for Older Persons Act of 1995, 42 U.S.C. 2007 (b)(2)(c), (as may be amended from time to time, the “Act”). Developer or the Association shall have the power to amend this Section without the consent of the Owners in order to make this Section consistent with the Act as it may be amended, the regulations adopted pursuant thereto, and any judicial decisions arising from under or otherwise relating thereto, in order to maintain the intent and enforceability of this Section. The Association must ensure that at least 80% of the Units shall be occupied by at least one person fifty-five (55) years of age or older per Unit, except that the Association is not obligated to comply with this requirement until 25% of the Units are occupied.

12.3.14.2 Restrictions on Occupancy.

- (i) Each occupied Unit within the Property shall at all times have as a permanent occupant therein at least one person who is 55 years of age or older (the “Qualifying Occupant”); provided, in the event of the death of a person who was the sole Qualifying Occupant of a Unit, the spouse of such Qualifying Occupant may continue to occupy the Unit as long as the provisions of the Act and the regulations adopted thereunder are not violated by such occupancy. For purposes of this Section, an occupant shall not be considered a permanent occupant unless such occupant considers the Unit his or her legal residence and actually resides in the Unit for at least six months during every calendar year.
- (ii) No persons who have yet to attain eighteen (18) years of age shall be permitted to reside in any Unit within the Property except as provided herein. Children under eighteen (18) years of age may be permitted to visit and temporarily reside in a Unit within the Property provided that such temporary residence shall not exceed sixty (60) days in any one calendar year or sixty (60) days within any consecutive twelve (12) month period, whichever may provide the least permissible residence.

- (iii) Nothing in this Section is intended to restrict the ownership of or transfer of title to any Unit; provided, no Owner may occupy his or her Unit unless the requirements of this Section are met nor shall any Owner permit occupancy of the Unit in violation of this Section. Owners shall be responsible for including the statement that the Units within the Property are intended for the housing of persons 55 years of age or older in conspicuous type in any lease or other occupancy agreement or contract of sale relating to any Owner's Unit. Every lease of a Unit shall provide that failure to comply with the requirements and restrictions of this Section shall constitute a default under the lease.
- (iv) Any Owner may request in writing that the Board of Directors make an exception to the requirements of this Section with respect to his or her Unit, and the Board may, but shall not be obligated to, grant exceptions, in its sole discretion, provided that the requirements for exemption from the Act still would be met.

12.3.14.3 Change in Occupancy – Notification of Association. In the event of any change in occupancy of any Unit, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Unit shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Unit and such other information as the Board may reasonably require to verify the age of the occupant. In the event an Owner fails to notify the Board and provide all required information within 10 days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Unit for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the occupant continues to meet the requirements of this Declaration, in addition to all other remedies available to the Association under this Declaration.

12.3.14.4 Monitoring Age Compliance by Association. The Association shall be responsible for maintaining age records on all occupants of Units. The Board shall adopt policies, procedures and rules to monitor and maintain compliance with this Section, including policies regarding visitors, updating of age records, granting of exemptions, and enforcement. The Association shall periodically distribute such policies, procedures and rules to Owners and make copies available to Owners and their tenants and mortgagees upon reasonable request.

12.3.14.5 Association as Attorney-In-Fact. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS HIS OR HER ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION. Owners shall promptly and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Unit which in the judgment of the Board are reasonably necessary to monitor compliance with this Section.

12.3.14.6 Hold Harmless by Owners. Each Owner shall be responsible for ensuring compliance with his or her Unit with the requirements and restrictions of this Section and the rules of the Association adopted hereunder. EACH OWNER, BY ACCEPTANCE OF TITLE TO A UNIT, AGREES TO INDEMNIFY, DEFEND AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, EXPENSES, DAMAGES AND CAUSES OF ACTION WHICH MAY ARISE FROM THE FAILURE OF SUCH OWNER'S UNIT TO COMPLY.

12.3.14.7 Enforcement. The Association shall enforce the terms and conditions of this Declaration through all of the rights and remedies available to it pursuant to this Declaration, including but not limited to the right to levy fines and liens.

12.3.15 **Use of Lots and Units.** Except as permitted by Sections 7.7 and 12.3.4, each Lot and Unit shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. No more than one (1) Unit shall be located on any Lot. Lots may be combined with the prior consent of the ARC, provided only one Unit shall be placed on the combined Lots and only for so long as a unity of title agreement in form approved by the Association is recorded against both Lots. The use of a portion of a Unit as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. Lease or rental of a Unit for residential purposes shall also not be considered to be a violation of this covenant so long as the lease (i) is for not less than the entire Lot and all the improvements thereon, (ii) is not for a period of less than twelve (12) months, (iii) complies with all governmental laws, rules, ordinances and regulations; and (v) is otherwise in compliance with the Rules and Regulations as may be promulgated and published from time to time by the Board of Directors. No bed and breakfast facility may be operated out of a Unit. Individual rooms of a Unit may not be leased on any basis. No transient tenants may be accommodated in a Unit. All leases or occupancy agreements shall be in writing, and, prior to the commencement of any such lease, the Owner shall provide the Association and the managing agent of the Association with copies of such lease. No Unit may be subject to more than one (1) lease in any twelve (12) month period. No time-share or other similar arrangement is permitted. The Owner must make available to the lessee or occupants copies of the governing documents for Cresswind at The Ponds. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations of the Association and any other applicable provisions of any other agreement, document or instrument governing Cresswind at The Ponds or administered by the Association or any other applicable governmental law, rule or regulation. During the time a Unit is leased or occupied by others, the Owner thereof shall not have the right to use the Common Area except as a guest of another Owner or lessee, or to enforce its rights as landlord pursuant to South Carolina law. Owners wishing to lease their Units shall be jointly and severally liable to the Association with the lessees of their Unit for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by or which is the responsibility of such lessee. All leases shall provide that the Association shall have the right (i) to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation or Bylaws, the Rules and Regulations of the Association or any other applicable provisions of any agreement, document or instrument governing Cresswind at The Ponds or administered by the Association, and (ii) to collect all

rental payments due to the Owner and to apply same against unpaid Assessments if, and to the extent that, the Owner is in default in the payment of Assessments.

12.3.16 Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner upon any portion of the Property, provided that up to two (2) generally recognized house pets (not including tropical fish, which may be kept in reasonable numbers) may be kept in Units, subject to Rules and Regulations adopted by the Association through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be kept within any screened enclosure. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas. Pets shall be under leash at all times when walked or exercised in any portion of the Lots or Common Areas, and no pet shall be permitted to leave its excrement on any portion of the Lots or Common Areas, and the Owner of such pet shall immediately remove the same. Upon the written request of the Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this **Section 12.3.16**, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the Owner of a particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions.

12.3.17 Motor Vehicles, Trailers, Boats, Etc. The Board of Directors of the Association shall have the authority to promulgate Rules and Regulations to govern or prohibit mobile homes, trailers (either with or without wheels), motor homes, tractors, trucks, helicopters, commercial vehicles of any type, campers, recreational vehicles, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, motorized go-carts or any other related forms of transportation. No Owners or other Occupants of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Lot or Unit or within any portion of the Common Areas, except (i) within enclosed garages or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

12.3.18 Firearms. The discharge of firearms, including without limitation BB guns, pellet guns and other firearms of all types and sizes, is prohibited. Notwithstanding anything to the contrary contained herein, the Association shall not be obligated to take action to enforce this Section.

12.3.19 Lighting. All exterior lighting must be approved in advance by the ARC, except for seasonal Christmas decorative lights which may be displayed only between Thanksgiving Day and January 10, unless prohibited or further restricted by applicable Association restrictions.

12.3.20 Solar Panels and Energy Conservation Equipment. The ARC must approve all solar panels and energy conservation equipment prior to installation of such equipment on a Unit. All solar heating apparatus must conform to the standards set forth in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating, and domestic

Water Systems. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as reasonably determined by the ARC as set forth in this **ARTICLE 12**. No solar panel, vents, or other roof-mounted, mechanical equipment shall project more than 1.0 feet above the surface of the roof of a Unit; and all such equipment, other than solar panels, shall be painted consistent with the color scheme of the portion of the Unit to which such equipment is installed. This provision is not intended to prohibit the use of solar energy devices.

12.3.21 Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Unit shall be of a type as approved in writing by the ARC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season (nor at any other time). Any such approved hurricane shutters may be installed or closed up to forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise. Except as the Board may otherwise decide, shutters may not be closed at any time other than a storm event. Any approval by the ARC shall not be deemed an endorsement of the effectiveness of hurricane shutters.

12.3.22 Irrigation. The water used in the irrigation system may not be suitable for drinking or water sports. Children and pets should not play in such water. Due to water quality, irrigation systems may cause staining on Units, other structures or paved areas. It is each Owner's responsibility to treat and remove any such staining. Association may require from time to time, that Owners install, at such Owner's sole cost and expense, system(s) to prevent stains (e.g., automatic deionization systems). Each Owner whose Unit receives water from a well system acknowledges and agrees to service or have serviced and to maintain or have maintained in good condition the well system, and to replace or have replaced all filters and/or filtration devices necessary for the proper functioning of the well system. Without limiting the foregoing, should an Owner fail to install, maintain, or service the necessary system(s) to prevent stains or fail to replace any necessary filter and/or filtration device as provided herein, the Association may, but is not obligated to, install any such stain prevention system(s) and/or replace any such filters or filtration devices, and the cost of the same shall be charged as an Individual Assessment against such Owner.

12.3.23 Pools and Spas. No above ground pools shall be permitted. All pools and appurtenances installed shall require the approval of the ARC as set forth in this Declaration. All pools shall be adequately maintained and chlorinated. Unless installed by Declarant, no slides, or platforms shall be permitted without ARC approval. The drainage of a pool into another Lot, the Common Areas or into the waterways, canals, or Wetland & Upland Conservation Areas is prohibited.

12.3.24 Roofs and Pressure Treatment. Roofs and/or exterior surfaces and/or pavement, including, but not limited to, walks and drives, shall be pressure treated as often as appropriate but in any event within thirty (30) days of notice by the ARC.

12.3.25 **Paint.** Units shall be repainted as often as needed but in any event within forty-five (45) days of notice by the ARC.

12.3.26 **Storage.** No temporary or permanent utility or storage shed, storage building, tent, or other structure or improvement shall be permitted and no other structure or improvement shall be constructed, erected, altered, modified or maintained without the prior approval of the ARC, which approval shall conform to the requirements of this Declaration and/or the ARC Rules and Regulations.

12.3.27 **Fences and Walls.** Walls and fences on Lots must be approved in advance by the ARC in its sole discretion. Under no circumstances shall wood fences be permitted in any part of Cresswind at The Ponds.

12.3.28 **Porches.** No grills, gym or other equipment may be stored on the front porches of Units. The ARC in its sole discretion may establish Rules and Regulations regarding the appearance of front porches.

12.3.29 **Garage Doors.** Garage Doors shall be closed at all times when the garage of a Unit is not in use.

12.3.30 **Garbage Storage/Pickup.** The Board of Directors of the Association shall have the authority to promulgate Rules and Regulations to govern garbage storage and pickup within Cresswind at The Ponds.

12.3.31 **Minor's Use of Facilities.** Parents shall be responsible for all actions of their minor children at all times in and about Cresswind at The Ponds. Declarant and the Association shall not be responsible for any use of the facilities by anyone, including minors.

12.3.32 **Sewer Lift Station Disclaimer.** It is currently contemplated that a sewer lift station shall be installed within the Cresswind at The Ponds and portions of the Property are subject to maintenance and access easements related thereto, for twenty-four hour access seven days a week for such lift station [CONFIRM]. DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION, LOCATION OR FUTURE MODIFICATIONS OF SUCH LIFT STATION.

ARTICLE 13

RULE MAKING

13.1 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable Rules and Regulations concerning the use of Lots, Units, the Common Areas and facilities located thereon. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such Rules and Regulations and amendments thereto. Such Rules and Regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation is specifically overruled, canceled or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Members holding

a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or Unit.

13.2 Authority and Enforcement. Subject to the provisions of **Section 14.9**, upon the violation of this Declaration, the Bylaws or any Rules and Regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge upon the Lot or Unit of the Owners or Occupants of which are guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; or (iii) to suspend an Owner's right (and the right of such Owner's family, guests and tenants and of the co-Owners of such Owner and their respective families, guests and tenants) to use any of the Recreational Facilities located in the Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his or her family, guests or tenants or by his or her Occupants or co-Owners or the family, guests or tenants of his or her Occupants or co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

13.3 Procedure. The Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other Occupant of the Property for violations of this Declaration, the Bylaws or any Rules and Regulations, unless and until the following procedure is followed: (a) Written demand to cease and desist from an alleged violation shall be served by certified mail, return receipt requested, upon the Owner responsible for such violation specifying: (i) The alleged violation; (ii) The action required to abate the violation; (iii) A date and time for the Owner's hearing before the Board; (iv) Information on the availability of non binding mediation through the South Carolina Department of Consumer Affairs ("Department") pursuant to Section 27-25-190 South Carolina Code of Laws; and (v) the Department's current address, telephone numbers and website address; and (b) The hearing shall be held in an executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director or other individual who delivered such notice. In addition, the notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

13.4 Declarant Not Subject to Rules and Regulations. The Rules and Regulations shall not apply to Declarant or any property owned by Declarant or adversely affect the interests of Declarant. Without limiting the foregoing, Declarant, and/or its assigns, shall have the right to: (i) develop and construct Units, Common Areas and related improvements within Cresswind at The Ponds, and make any additions, alterations, improvements, or changes thereto (ii) maintain sales offices (for the sale and resale of Units and Lots), general office and construction operations within Cresswind at The Ponds; (iii) place, erect or construct portable, temporary or accessory buildings or structures within Cresswind at The Ponds for sales, construction storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in

connection with the development or construction of any portion of Cresswind at The Ponds; (v) post, display, inscribe or affix to the exterior of any portion of the Common Areas or portions of Cresswind at The Ponds owned by Declarant, signs or others materials used in developing, constructing, selling or promoting the sale of any portion of Cresswind at The Ponds including, without limitation, Lots and Units; (vi) excavate fill from any lakes or waterways within and/or contiguous to Cresswind at The Ponds by dredge or dragline, store fill within Cresswind at The Ponds and remove and/or sell excess fill; and grow or store plants and trees within, or contiguous to Cresswind at The Ponds and use and/or sell excess plants and trees; and (vii) undertake all activities which, in the sole opinion of Declarant, are necessary for the development and sale of any lands and improvements comprising Cresswind at The Ponds.

ARTICLE 14

GENERAL PROVISIONS

14.1 Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION OR THE BYLAWS OF THE ASSOCIATION, DECLARANT HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE TERM SET FORTH IN **SECTION 10.2**. 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 appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this **Section 14.1** and the provisions of **Section 10.2**, without the necessity of a vote at an annual meeting. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of **Section 10.2** and this **Section 14.1**, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Units, and a special meeting of the Association shall be called within a reasonable time thereafter. 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.

14.2 Sales Office. For so long as Declarant owns any property in Cresswind at The Ponds that is affected by this Declaration, or maintains a sales office within Cresswind at The Ponds, Declarant shall have the right to take such action reasonably necessary to transact any business necessary to consummate the development of Cresswind at The Ponds and sales and re-sales of Units and/or other properties owned by Declarant or others outside of Cresswind at The Ponds. This right shall include, but not be limited to, the right to: (i) maintain models, sales offices and parking associated therewith; (ii) have signs on any portion of Cresswind at The Ponds, including Common Areas; (iii) have employees in the models and offices; and (iv) use the Common Areas to show Units. Prior to Turnover, the sales office and all signs pertaining to development and sales remain the property of Declarant. Declarant shall have all of the foregoing rights without charge or expense.

14.3 Modification. The development and marketing of Cresswind at The Ponds will continue as deemed appropriate in Declarant's sole discretion and nothing in this Declaration or ARC Rules and Regulations, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of Cresswind at The Ponds to, as an example and not a limitation, modify the boundary lines of the Common Areas, grant easements, dedications, agreements, licenses, restrictions, reservations, covenants, rights-of-way, and to take such other actions which Declarant, or its agents, affiliates, or assignees may deem necessary or appropriate. The Association and Owners shall, at the request of Declarant, execute and deliver any and all documents and instruments which Declarant deems necessary or convenient, in its sole and absolute discretion, to accomplish the same.

14.4 Promotional Events. Prior to Turnover, Declarant shall have the right, at any time, to hold marketing and promotional events or to use the Common Areas without restriction by the Association and without any charge for use thereof. Declarant, its agents, affiliates, or assignees shall have the right to market Cresswind at The Ponds and Units in advertisements and other media by making reference to Cresswind at The Ponds, including, but not limited to, pictures or drawings of Cresswind at The Ponds, Common Areas, Lots and Units constructed in Cresswind at The Ponds. All logos, trademarks, and designs used in connection with Units are the property of Declarant, and the Association shall have no right to use the same after Turnover except with the express written permission of Declarant.

14.5 Use by Prospective Purchasers. Prior to Turnover, Declarant shall have the right, without charge, to use the Common Area for the purpose of entertaining prospective purchasers of Units, or other properties owned by Declarant outside of Cresswind at The Ponds.

14.6 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Public Records, without the approval of any person or entity whatsoever. Such amendments may include, without limitation, the creation of easements for Telecommunications Systems, utility, drainage, ingress and egress and roof overhangs over any portion of Cresswind at The Ponds; additions or deletions from the properties comprising the Common Areas; changes in the Rules and Regulations, and modifications of restrictions on the Units, and maintenance standards for landscaping. Declarant's right to amend under this provision is to be construed as broadly as possible.

14.7 Amendment by Association. Amendments to this Declaration, other than those authorized by **Section 14.6** hereto, shall be proposed and adopted in the following manner:

14.7.1 Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Owner and Member of the Association.

14.7.2 At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Unit, building or the Common Areas as set

forth in this Declaration or adversely affects the title to any Unit or building, such amendment shall be valid only upon the written consent thereto by a majority in number of votes of the then existing Owners affected thereby, (ii) that any amendment which materially and adversely affects the security, title and interest of any Mortgagee must be approved by such Mortgagee, and (iii) during any period in which Declarant owns a Unit or building, such amendment must be approved by Declarant.

14.7.3 The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the president of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

14.8 General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment to this Declaration shall affect the rights of Declarant unless such amendment receives the prior written consent of Declarant, which consent may be withheld for any reason whatsoever. No amendment shall alter the provisions of this Declaration benefiting Mortgagees without the prior approval of the Mortgagee(s) enjoying the benefit of such provisions. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. All amendments must comply with **Section 8.2** which benefits the WMD and/or SCDHEC. No amendment shall be effective until it is recorded in the Public Records.

14.9 Enforcement. Each Owner shall comply strictly with the Bylaws and the published Rules and Regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot or Unit, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Recreational Facilities located in the Common Areas, or for instituting an action to recover sums due, for damages, and/or for injunctive relief and/or any other remedy available at law or in equity, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction or other equitable action to restrain any such violation or breach or any threatened violation or breach. After Turnover, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of two-thirds (2/3) of

the total vote of the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments or fines, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims or crossclaims brought by the Association in proceedings instituted against it. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the Bylaws or any Rules and Regulations of the Association, however long continued. This Section shall not be amended unless such amendment is made by Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.10 Enforcement by or Against Other Persons. In addition to the foregoing, this Declaration or ARC Rules and Regulations may be enforced by Declarant and/or, where applicable, the Association by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration or ARC Rules and Regulations shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this Declaration or the ARC Rules and Regulations.

14.11 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of Declarant, the Association and all other Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date of the recording of this Declaration, provided that rights and obligations which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said fifty (50) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each (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 fifty (50) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, and such termination is approved by the County, an instrument evidencing such termination shall be duly filed, such instrument to contain a certificate wherein the president of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in the Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other

evidence of obligation or transfer, to the covenants, conditions, restrictions, easements, rights, benefits and privileges of every character contained herein, shall be deemed and taken to be appurtenant to and covenants running with such property, and shall be binding upon any such grantee, mortgagee or trustee and their successors and assigns as fully and completely as though the provisions of this Declaration were fully recited and set forth in their entirety in such documents.

14.12 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance, building codes or other regulations which are less restrictive. The effective date of this Declaration shall be the date of its filing for record. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

14.13 Dissolution.

14.13.1 **Generally.** In the event of the dissolution of the Association without reinstatement within thirty (30) days, other than incident to a merger or consolidation, any Owner may petition the Circuit Court of the appropriate Judicial Circuit of the State of South Carolina for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Common Areas in the place and stead of the Association, and to make of such provisions as may be necessary for the continued management of the affairs of the dissolved Association. In the event the Association is dissolved, and any portion of the Surface Water Management System is part of the Common Areas, the Surface Water Management System shall be conveyed to an appropriate agency of local government, and that if not accepted, then the Surface Water Management System shall be dedicated to a similar non-profit corporation.

14.13.2 **Applicability of Declaration after Dissolution.** In the event of dissolution of the Association, Cresswind at The Ponds and each Unit therein shall continue to be subject to the provisions of this Declaration, including, without limitation, the provisions respecting Assessments specified in this Declaration. Each Owner shall continue to be personally obligated to the successors or assigns of Association for Assessments to the extent that Assessments are required to enable the successors or assigns of Association to properly maintain, operate and preserve the Common Areas. The provisions of this Section shall only apply with regard to the maintenance, operation, and preservation of those portions of Cresswind at The Ponds which had been Common Areas and continue to be so used for the common use and enjoyment of the Owners.

14.14 Assignment. Declarant may assign all or a portion of its rights under this Declaration, or all or a portion of such rights in connection with portions of the Property. In the

event of such a partial assignment, the assignee shall not be deemed Declarant, but may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis. After an assignment, the assignee shall have the same rights and powers, and be subject to the same obligations and duties as was Declarant prior to the assignment, and Declarant shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates.

14.15 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

14.16 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

14.17 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Association, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Property, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

14.18 Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages or otherwise disposes of any Lot or Unit, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee or transferee.

14.19 No Trespass. Whenever the Association, Declarant, the ARC and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve or do any other action within any portion of the Property, the entering thereon and the taking of such action shall not be deemed to be a trespass.

14.20 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Units. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Cresswind at The Ponds Community Association, Inc.
701 S. Olive Ave., Suite 104
West Palm Beach, FL 33401
Attention: President

Or at such other address as specified by written notice to Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered to such address as such Mortgagees specify in writing to the Association, and if no such notice is given to the Association, to the address provided in the Mortgage. All notices are deemed delivered when delivered by hand or when deposited in the United States mail.

14.21 Plats. In addition to this Declaration, the Property shall be subject to the additional covenants, restrictions, easements, dedications, reservations and other terms and provisions set forth in the Development Order and Plats of the Property, which Plats are recorded or to be recorded in the Public Records.

14.22 Use of Cresswind at The Ponds Name. All parties owning or otherwise making any use of any portion of the Property shall be deemed, by virtue of accepting such ownership or making such use, to have covenanted and agreed that: (i) except as provided below, no usage of the name "Cresswind at The Ponds" or any associated logo will be made in naming or referring to any business or activity within or outside of the Property or in describing or referring to the location of any business or enterprise conducted within or outside of the Property and (ii) generally, no usage of that name will be made whatsoever without the express prior written approval of Declarant.

14.23 Disclaimer as to Site Plan. THE SITE PLAN OF CRESSWIND AT THE PONDS AND ALL AMENDMENTS THERETO REPRESENTS ONLY A GENERAL SCHEME OF DEVELOPMENT AND SHALL NOT BE CONSTRUED AS REPRESENTING, IMPLYING OR GUARANTEEING THAT ANY UNIT OR OTHER IMPROVEMENT WILL BE BUILT IN ACCORDANCE THEREWITH.

14.24 Master Association. The Property is part of a community known as The Ponds. The Common Property (as defined in the Master Documents) is governed by the Master Association pursuant to the Master Documents. The Master Documents also contain certain rules, regulations and restrictions relating to the use of such Common Property. Each Unit Owner will be a member of the Master Association and will be subject to all of the terms and conditions of the Master Documents, as amended and supplemented from time to time. Among the powers of the Master Association is the power to assess the members of the Master Association for a pro-rata share of the expenses of the operation and maintenance (including the management fees relating to) of such Common Property and to impose and foreclose liens in the event such assessments are not paid when due. As provided herein and in the Master Documents, the Master Association shall assess each Unit the foregoing expenses as allocated to the Property. In addition, the Master Association has a lien for collection of the foregoing assessments as provided in the Master Documents. Except for those instances where the use is limited pursuant to the Master Documents, the Unit Owners shall be entitled to use all of said Common Areas in

accordance with and subject to the terms of the Master Documents. Those instances where the use is limited pursuant to the Master Documents, the Unit Owners shall be entitled to use all of said Common Areas in accordance with and subject to the terms of the Master Documents. The Master Association may impose certain obligations on the Association including, but not limited to, obligating the Association to collect Assessments due the Master Association despite the fact that such Assessments are not Common Expenses of the Property.

14.25 Representations. Declarant makes no representations concerning development both within and outside the boundaries of Cresswind at The Ponds including, but not limited to, the number, design, boundaries, configuration and arrangements, prices of all Lots or Units and buildings in all other proposed forms of ownership and/or other improvements on Cresswind at The Ponds or adjacent to or near Cresswind at The Ponds, including, but not limited to, the size, location, configuration, elevations, design, building materials, height, view, airspace, number of homes, number of buildings, location of easements, parking and landscaped areas, services and amenities offered.

14.26 Non-Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE ASSOCIATION DOCUMENTS, THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF CRESSWIND AT THE PONDS INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, LESSEES, LICENSEES, INVITEES, AGENTS, SERVANTS, CONTRACTORS, AND/OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

14.26.1 IT IS THE EXPRESS INTENT OF ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF CRESSWIND AT THE PONDS HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF CRESSWIND AT THE PONDS AND THE VALUE THEREOF; AND

14.26.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN AGENCY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA AND/OR DORCHESTER COUNTY OR PREVENTS TORTIOUS ACTIVITIES; AND

14.26.3 THE PROVISIONS OF ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY, AND WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY, OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO A UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF CRESSWIND AT THE PONDS (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS SECTION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS SECTION OR OTHERWISE. AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS).

14.27 Dispute Resolution.

14.27.1 Bound Parties. The Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this chapter (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Cresswind at The Ponds without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 14.28.2, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.29 in a good faith effort to resolve such Claim.

14.27.2 Claims. As used in this chapter, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

14.27.2.1 the interpretation, application, or enforcement of the Association Documents;

14.27.2.2 the rights, obligations, and duties of any Bound Party under the Association Documents; or

14.27.2.3 the design or construction of any improvements within Cresswind at The Ponds, other than matters of aesthetic judgment by the ARC, which shall not be subject to review and shall not be subject to this section.

14.27.3 Disputes Not Considered Claims. The following disputes shall not be considered 'Claims' unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.29:

14.27.3.1 any suit by the Association to collect Assessments or other amounts due from the Owner;

14.27.3.2 any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration relating to creation and maintenance of Community Standards;

14.27.3.3 any suit that does not include the Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Association Documents;

14.27.3.4 any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 14.29; and

14.27.3.5 any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 14.29.1, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this chapter.

14.28 Dispute Resolution Procedures

14.28.1 Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

14.28.1.1 the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

14.28.1.2 the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

14.28.1.3 the Claimant's proposed resolution or remedy; and

14.28.1.4 the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

14.28.2 Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

14.28.3 Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days in which to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Dorchester and/or Charleston County, South Carolina (the "Mediator"). Each Bound Party shall present the Mediator with a written summary of the Claim. If the Claimant does not submit the claim to mediation within

such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the Mediator's fees.

14.28.4 Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the Procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

14.29 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Owners entitled to cast seventy-five (75%) percent of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

14.29.1 initiated during the period when Declarant retains its Class "B" membership;

14.29.2 initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens;

14.29.3 initiated to challenge ad valorem taxation or condemnation proceedings;

14.29.4 initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

14.29.5 to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by a vote of seventy-five percent (75%) of the total votes in the Association.

14.30 Resolution of Disputes. BY ACCEPTANCE OF A DEED, EACH OWNER AGREES THAT THE ASSOCIATION DOCUMENTS ARE VERY COMPLEX; THEREFORE, ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH

RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSS CLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO ASSOCIATION DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHOULD BE HEARD IN A COURT PROCEEDING BY A JUDGE AND NOT A JURY IN ORDER TO BEST SERVE JUSTICE. DECLARANT HEREBY SUGGESTS THAT EACH OWNER UNDERSTAND THE LEGAL CONSEQUENCES OF ACCEPTING A DEED TO A LOT OR UNIT.

14.31 Venue. EACH OWNER ACKNOWLEDGES REGARDLESS OF WHERE SUCH OWNER (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) RESIDES, (iii) OBTAINS FINANCING OR (iv) CLOSED ON A UNIT, THIS DECLARATION LEGALLY AND FACTUALLY WAS EXECUTED IN DORCHESTER COUNTY, SOUTH CAROLINA. DECLARANT HAS AN OFFICE IN DORCHESTER COUNTY, SOUTH CAROLINA AND EACH UNIT IS LOCATED IN DORCHESTER COUNTY, SOUTH CAROLINA. ACCORDINGLY, AN IRREBUTTABLE PRESUMPTION EXISTS THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE LIES IN DORCHESTER COUNTY, SOUTH CAROLINA. IN ADDITION TO THE FOREGOING, EACH OWNER AND DECLARANT AGREE THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN DORCHESTER COUNTY, SOUTH CAROLINA.

14.32 Reliance. BEFORE ACCEPTING A DEED TO A LOT OR UNIT, EACH OWNER HAS AN OBLIGATION TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THIS DECLARATION. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT HE OR IT HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. DECLARANT IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A LOT OR UNIT THAT THIS DECLARATION IS VALID, FAIR AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO DECLARANT. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR DECLARANT TO SUBJECT CRESSWIND AT THE PONDS TO THIS DECLARATION, EACH OWNER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE DECLARANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF OWNER HEREAFTER CAN, SHALL OR MAY HAVE AGAINST DECLARANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING THIS DECLARATION, OR THE EXHIBITS

HERETO. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF SOUTH CAROLINA.

14.33 South Carolina Statutes. Whenever this Declaration refers to the Code of Laws of South Carolina, it shall be deemed to refer to the Code of Laws South Carolina as they exist on the date this Declaration is recorded except to the extent provided otherwise as to any particular provision of the Code of Laws of South Carolina.

14.34 Construction Activities. ALL OWNERS, OCCUPANTS AND USERS OF CRESSWIND AT THE PONDS ARE HEREBY PLACED ON NOTICE THAT (1) DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES AND/OR (2) ANY OTHER PARTIES WILL BE, FROM TIME TO TIME, CONDUCTING CONSTRUCTION ACTIVITIES, BLASTING, EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO CRESSWIND AT THE PONDS. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF CRESSWIND AT THE PONDS, EACH SUCH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO CRESSWIND AT THE PONDS WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DECLARANT AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, EXCEPT RESULTING DIRECTLY FROM DECLARANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (iv) ANY PURCHASE OR USE OF ANY PORTION OF CRESSWIND AT THE PONDS HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING.

14.35 Title Documents. Each Owner by acceptance of a deed to a Lot or Unit acknowledges that such Lot or Unit is subject to certain land use and title documents and all amendments thereto, which include among other items, the Title Documents identified in this Declaration (collectively, the "Title Documents"). Declarant's plan of development for Cresswind at The Ponds may necessitate from time to time the further amendment, modification and/or termination of the Title Documents. DECLARANT RESERVES THE UNCONDITIONAL RIGHT TO SEEK AMENDMENTS AND MODIFICATIONS OF THE TITLE DOCUMENTS. It is possible that a governmental subdivision or agency may require the execution of one or more documents in connection with an amendment, modification, and/or termination of the Title Documents. To the extent that such documents require the joinder of Owners other than Declarant, Declarant, by any one of its duly authorized officers, may, as the

agent and/or the attorney-in-fact for the Owners, execute, acknowledge and deliver any documents required by applicable governmental subdivision or agency; and the Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Declarant, through any one of its duly authorized officers, as their proper and legal attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing, each Owner agrees, by its acceptance of a deed to a Lot or Unit:

14.35.1 to execute or otherwise join in any documents required in connection with the amendment, modification, or termination of the Title Documents; and

14.35.2 that such Owner has waived its right to object to or comment the form or substance of any amendment, modification, or termination of the Title Documents.

Without limiting the foregoing, upon the Community Completion Date, the Association shall assume all of the obligations of Declarant under the Title Documents unless otherwise provided by Declarant by amendment to this Declaration recorded by Declarant in the Public Records, from time to time, and in the sole and absolute discretion of Declarant.

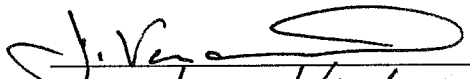
14.36 Exhibits. The following exhibits are attached to and incorporated in this Declaration:

Exhibit "A" – Legal Description of Initial Property

Exhibit "B" – Bylaws

IN WITNESS WHEREOF, a duly authorized officer of the undersigned Declarant has executed this Declaration under seal, as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

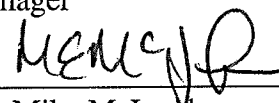

Name: JEFF VANDEWIEL

KH Ponds LLLP, a Delaware limited
liability limited partnership

By: KH Ponds GP LLC, a Delaware
limited liability company, its
General Partner

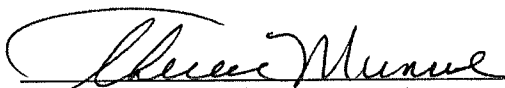
By: The Kolter Group LLC,
a Florida limited liability company,
its Manager

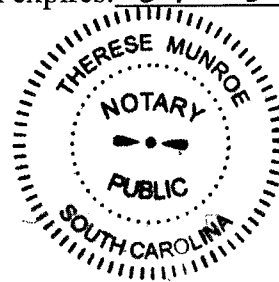

Name: Therese Munroe

By: 
Name: Mike McLendon
Title: Authorized Signatory

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

The foregoing instrument was acknowledged before me as of this 28 day of January, 2015, by Mike McLendon, as the Authorized Signatory of The Kolter Group LLC, a Florida limited liability company, the Manager of KH Ponds GP LLC, a Delaware limited liability company, the General Partner of KH Ponds LLLP, a Delaware limited liability limited partnership, on behalf of said limited liability limited partnership. The foregoing individual ☒ is personally known to me or ☐ has produced N/A as identification.


Print Name: Therese Munroe
NOTARY PUBLIC - STATE OF South Carolina
My commission expires: 09-08-2015
(Notarial Seal)



JOINDER OF ASSOCIATION

Cresswind at The Ponds Community Association, Inc., a South Carolina not-for-profit corporation, hereby joins in this Declaration of Covenants, Conditions and Restrictions for Cresswind at The Ponds, for the sole purpose of agreeing to perform its obligations as contained herein.

Signed, sealed and delivered
in the presence of:

Cresswind at The Ponds Community Association, Inc., a South Carolina not-for-profit corporation

Name: JEFF Vandewire

By: 
Name: Mike McLendon
Its: President

Name: Therese Munroe

STATE OF SOUTH CAROLINA)
)ss.
COUNTY OF DORCHESTER)

The foregoing instrument was acknowledged before me this 28 day of January 2015, by Mike McLendon, the President of Cresswind at The Ponds Community Association, Inc., a South Carolina not-for-profit corporation, on behalf of the corporation. The above-named individual [x] is personally known to me or [] has produced the following identification 1/15 which is current or has been issued within the past five years and bears a serial or other identifying number and did not take an oath.


 Print Name: Theresa Munroe
 NOTARY PUBLIC - STATE OF SC
 My commission expires: 09.08.2015
 (Notarial Seal)

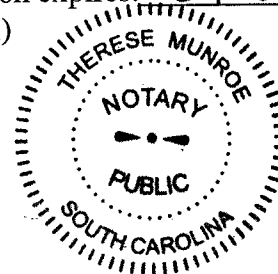


EXHIBIT "A"

LEGAL DESCRIPTION OF INITIAL PROPERTY

All that certain piece, parcel or tract of land situate, lying and being in Dorchester County, South Carolina, identified as Cresswind at The Ponds Phase 1, containing a total of 25.91 acres, and being more fully shown and delineated on the plat entitled "Final Subdivision Plat of Cresswind at The Ponds Phase 1" dated August 21, 2014, prepared by Thomas & Hutton, and recorded August 22, 2014 in Plat Cabinet M, Page 35, said tract having such size, shape, form, courses, distances, buttings, boundaries and delineations as are more fully shown on the above referred to plat; reference is hereby craved to said plat and same is made a part and parcel of this description.

EXHIBIT “B”

BYLAWS

BY-LAWS
OF
CRESSWIND AT THE PONDS COMMUNITY ASSOCIATION, INC.

ARTICLE 1
GENERAL PROVISIONS

Section 1.1 Organization and Purpose. Cresswind at The Ponds Community Association, Inc. ("Association") is a South Carolina not-for-profit corporation formed and organized for such purposes and with such powers as are set forth in its Articles of Incorporation. Such purposes include the administration of certain property within the planned unit development located in Dorchester County, South Carolina, and known as Cresswind at The Ponds (the "Community") in accordance with the Declaration of Covenants, Conditions and Restrictions for Cresswind at The Ponds recorded by KH Ponds LLLP, as Declarant, in the RMC Office for Dorchester County, South Carolina, as may be amended from time to time ("Declaration"). These By-Laws provide for the management and operation of the Association.

Section 1.2 Principal Office. The principal office of the Association shall initially be located at 701 S. Olive Avenue, Suite 104, West Palm Beach, FL 33401, Attn: Association President. Ultimately, the principal office of the Association shall be located in Charleston or Dorchester County, South Carolina.

Section 1.3 Definitions. The words used in these By-Laws shall generally be given their normal, currently understood definitions. Capitalized terms used in these By-Laws shall be defined as set forth in the Declaration or as the context requires or specifies a different definition.

ARTICLE 2
MEMBERSHIP; MEETINGS OF MEMBERS

Section 2.1 Members. The Association shall have two (2) classes of Members, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Unit.

(b) Class "B". The sole Class "B" Member shall be the Declarant, which shall have the ability to appoint all members of the Board of Directors for the period of time specified in the Declaration. Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns. Prior to the termination of the membership held by the Class "B" Member, the Class "B" Member shall have one (1) vote, plus that number of votes held by the Class "A" Members as a group.

Section 2.2 Each class of Members shall have such rights and privileges as are specifically granted to such class herein and under the Association Documents. The provisions of

the Declaration and other Association Documents pertaining to membership in the Association are incorporated herein by reference.

Section 2.3 Voting Rights. The vote of each Unit owned by a Class "A" Member shall be exercised by the Member. In any situation where a Member is entitled personally to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and they shall advise the Secretary of the Association, in writing, prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one person seeks to exercise it. Except as otherwise specified by the Association Documents, the vote of Members entitled to cast more than fifty (50%) percent of a quorum of the total eligible votes on any matters shall constitute the decision of the Members on such matter.

Section 2.4 Annual Meeting. The first annual meeting of the Members shall be held within three (3) months from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held either during the month of November or December of each year thereafter. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the fast day following which is not a legal holiday.

Section 2.5 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4th) of all of the votes of the Class "A" membership.

Section 2.6 Notice of Meetings. Written or printed notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or other person authorized to call the meeting by (i) mailing a copy of such notice, postage prepaid or (ii) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. Notices sent by first class mail shall be deposited into a United States mailbox at least fifteen (15) days, but no more than sixty (60) days, before the time set for the meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of Association or supplied by such Member to the Association for the purpose of notice. Notices given by other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting. All notices shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Notices of regular meetings of the Association, its Board of Directors, and committees, shall, at the Board's discretion, also be conspicuously posted within the Community.

Section 2.7 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, thirty-five percent (35%) of the votes of the Class "A" membership plus, for so long as the Class "B" membership exists, a representative of the Class "B" Member shall constitute a quorum for any action except as otherwise provided in the Declaration, Articles of Incorporation or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the meeting shall be adjourned and another meeting shall be scheduled for a date not less than ten (10) days, nor more than thirty (30) days, subsequent to the initial meeting. Written notice of the time and place of the adjourned meeting shall be provided to all Members. The quorum requirement for the adjourned meeting shall be the presence of Members, or of proxies,

entitled to cast twenty-five percent (25%) of the total vote of the Class "A" membership and a representative of the Class "B" membership.

Section 2.8 Proxies. At all meetings of Members, each Member may vote in person or by proxy. A designation of proxies shall be in writing, shall identify the Unit or Units for which it is given, and the person designated to cast the votes for such Unit(s) shall be signed by the Member or its duly authorized attorney in fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. In case of any conflict between two (2) or more proxies purporting to come up with the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon (a) conveyance by the Member of his Property; (b) receipt by the Secretary of a written notice and revocation of the proxy or of the death or judicially declared incompetency of a Member who is a natural person; or (c) eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

Section 2.9 Manner of Voting. Except as otherwise specified in the Association Documents with respect to voting on particular matters, the manner of voting (i.e. by show of hands, written ballot, electronic or other means) and absentee voting shall be governed by rules adopted by the Board of Directors.

Section 2.10 Waiver of Notice. Any Member may waive notice of a meeting of the Association in writing, either before, during, or after such meeting, and shall be deemed to have waived notice by attending the meeting unless the Member specifically objects to lack of proper notice of the date, place or time of the meeting at the time the meeting is called, or specifically objects to lack of required notice of business to be transacted prior to such business being put to a vote.

Section 2.11 Conduct at Meetings. The President shall preside over Association meetings. In his or her absence, the Vice President shall preside. To the extent consistent with the Association Documents, the meeting shall be conducted according to the most current edition of Robert's Rules of Order.

ARTICLE 3

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 3.1 Number. The affairs of this Association shall be managed by a Board of Directors (having the same meaning as a "Board" under S.C. Code §33-31-140). The Board shall initially consist of three (3) individuals appointed by the Class "B" Member. Once the Class "B" membership terminates, the Board may consist of up to seven (7) individuals who shall be elected by the Class "A" Members. All Board of Directors shall be Members of the Association, whether appointed by the Class "B" Member or the Class "A" Members.

Section 3.2 Manner and Timing of Selection

- (a) Except as otherwise provided in this Section 3.2, the Class "B" Member shall have sole and complete authority to appoint, remove, or replace the members of the Board of Directors so long as it retains its Class "B" vote.

(b) Within ninety (90) days after the date that Class "A" Members, other than Declarant, own twenty-five (25%) percent of the Units that will ultimately be governed by the Association, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect one (1) of the three (3) directors. The remaining two (2) directors shall be the appointees of the Class "B" Member. The director elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two (2) years or until the happening of the event described in subparagraph (e) whichever is shorter. If such director's term expires prior to the happening of the event described in subparagraph (c), a successor shall be elected for a like term.

(c) Within one hundred twenty (120) days after termination of the Class "B" membership, and, accordingly, the Class "B" vote, the President shall call for an election by which Class "A" Members shall be entitled to elect the three (3) directors. Upon the expiration of the term of office of each director elected by the Members, Members entitled to elect such directors shall be entitled to elect their successor to serve a term of two (2) years, all successor terms being two (2) years. Directors elected by the Members shall hold office until the respective successors have been elected.

ARTICLE 4

NOMINATIONS AND ELECTIONS

Section 4.1 Nominations and Declarations of Candidacy. Prior to each election of directors, the Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has an interest in serving as a director may file as a candidate. The Board of Directors shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

Nominations for election to the Board of Directors may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) Members or representatives of Members. Members of the Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year until their successors are appointed, and such appointment shall be announced in the notice of each election. The Nominating Committee may make as many nominations for election to the Board of Directors as it shall in its discretion determine. All Nominations shall be made by written ballot and during the filing period referenced above in this Section 4.1. Each candidate shall be given a reasonable opportunity to communicate his or her qualifications to the Members prior to the election or close of balloting.

Section 4.2 Election Procedures. For each position to be filled with the Board of Directors, each Member may cast the entire vote that it is allocated under the Declaration for each Unit that it owns. Cumulative voting shall not be permitted. That candidate who receives the

greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

Section 4.3 Removal of Directors and Vacancies. Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board of Directors meetings, or who is more than thirty (30) days delinquent (or is the representative of an Owner who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board of Directors may appoint a successor to fill the vacancy for the remainder of the term.

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

This Section 4.3 shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Class "B" Member. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board of Directors resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

ARTICLE 5 MEETINGS

Section 5.1 Organizational Meeting. The first meeting of the Board of Directors following each annual meeting of the Association shall be held within ten (10) days thereafter at such time and place as the Board of Directors shall fix.

Section 5.2 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as a majority of the directors shall determine, but at least one (1) such meeting shall be held during each fiscal year.

Section 5.3 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two (2) directors.

Section 5.4 Notice: Waiver of Notice. Notices of Board of Directors meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by (i) personal delivery, (ii) first class mail, postage prepaid, or (iii) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, facsimile telephone number, or electronic mail address, or sent to the directors mailing address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five (5) business days before the time

set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

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

Section 5.5 Telephonic Participation. Members of the Board of Directors or any committee may participate in a meeting of the Board of Directors or such committee, respectively, by conference telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

Section 5.6 Quorum. At all Board of Directors meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors during the meeting, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 5.7 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of Board of Directors meetings, recording all resolutions adopted and all transactions and proceedings occurring at such meetings.

Except as otherwise specifically provided below, all Board of Directors meetings shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

The President may adjourn any meeting of the Board of Directors and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

Section 5.8 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if written consent, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

ARTICLE 6 POWERS AND DUTIES

Section 6.1 General Authority. The Board of Directors shall be responsible for conducting the affairs of the Association and shall be authorized to exercise all rights and powers

of the Association and to do all acts and things on behalf of the Association except those which the Association Documents or South Carolina law specifically require to be done or approved by the membership. The Board of Directors shall have all powers necessary for the administration of the Association's affairs.

Section 6.2 Authorized Services and/or Duties. Authorized services and/or duties of the Board of Directors shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Association's expenses;
- (b) levying and collecting such Assessments from the Owners as outlined in the Declaration;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Areas and open space;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) opening bank accounts on behalf of the Association and designating the signatories required;
- (f) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited in depositories other than banks if the Board of Directors, in the exercise of its business judgment, determines it appropriate to do so;
- (g) making and amending Rules and Regulations in accordance with the Declaration;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Areas in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Association Documents, including the filing of liens for unpaid Assessments, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;

- (l) keeping books with detailed accounts of the Association's receipts and expenditures;
- (m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any mortgage on any Unit, current copies of the Association Documents and all other books, records, and financial statements of the Association as required by these By-Laws;
- (n) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Community;
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by South Carolina law, the Articles of Incorporation or the Declaration; and
- (p) providing services directly to the Owners which relate to the quality of life within the Community.

ARTICLE 7 OFFICERS AND THEIR DUTIES

Section 7.1 Designation of Officers. Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board of Directors; other officers may, but need not be members of the Board of Directors. The Board of Directors may appoint such other officers or assistant officers as it shall deem desirable, such officers to have such authority and perform such duties as the Board of Directors prescribes. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 7.2 Election and Term of Office. The Board of Directors shall elect the Association's officers at the first Board of Directors meeting following each annual meeting of the Members, to serve until their successors are elected.

Section 7.3 Removal and Vacancies. The Board of Directors may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal or otherwise, for the unexpired portion of the term.

Section 7.4 Powers and Duties of Officers. The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board of Directors may specifically conferred or impose upon them. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

ARTICLE 8 MANAGEMENT

Section 8.1 Committees. In addition to those committees specifically authorized elsewhere in the Association Documents, the Board of Directors may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board of Directors may designate by resolution. Each committee shall operate in accordance with the terms of its enabling resolution.

Section 8.2 Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making or decision-making authority or ultimate responsibility for those duties set forth in Section 6.2.

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

Section 8.3 Compensation of Directors, Officers and Committee Members. Except as specifically authorized under the Declaration, directors, officers and committee members shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of a quorum of the eligible votes represented at a regular or special meeting of the Association. Any officer or director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the directors other than the director requesting the reimbursement, if applicable. Nothing herein shall prohibit the Association from compensating an officer or director, or any entity with which an officer or director is affiliated, for services or supplies furnished to the Association in a capacity other than as an officer or director pursuant to a contract or agreement with the Association, provided that such officer's or director's interest was made known to the Board of Directors prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

Section 8.4 Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board of Directors and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant under the Declaration or these By-Laws, or interfere with development or construction of any portion of the Community, or diminish the level of services being provided by the Association.

(a) Notice. The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board of Directors or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address Declarant has registered with the Secretary of the Association, and such notice shall comply with the notice requirements otherwise set forth in these By-Laws for meetings of the Association or the Board of Directors.

(b) Opportunity to be Heard. The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

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

The Class "B" Member, its representatives or agents shall make its concerns, thoughts and suggestions known to the Board of Directors and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board of Directors, or the Association.

Section 8.5 Authority to Execute Contracts, Checks, Etc. At least two (2) officers, or such other person or persons as the Board of Directors may authorize by resolution, shall execute all agreements, contracts, deeds, easements, leases, checks, and other instruments of the Association.

Section 8.6 Right to Contract. The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominium regimes, and owners, residents, merchants, or tenants associations, within and outside the Community. Any common management agreement shall require the consent of a majority of the Board of Directors.

ARTICLE 9 ACCOUNTING AND FINANCIAL MATTERS

Section 9.1 Fiscal Year. The Association's fiscal year shall be the calendar year unless the Board of Directors establishes a different fiscal year by resolution.

Section 9.2 Accounting. The following accounting standards shall be followed unless the Board of Directors by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;

- (d) no remuneration shall be accepted by any individual from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise;
- (e) any thing of value received shall benefit the Association; and
- (f) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

Section 9.3 Financial Reports

(a) Quarterly Reports. Commencing at the end of the quarter in which the first Unit is sold by Declarant to an end-user Owner, financial reports shall be prepared for the Association at least quarterly containing:

- (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board of Directors resolution).

(b) Annual Report. An annual report consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board of Directors determines, by an independent public accountant.

Section 9.4 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, if the proposed borrowing is for the purpose of making discretionary, capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period exceeds or would exceed twenty (20%) percent of the Association's budgeted gross expenses for that fiscal year, such borrowing shall require

approval of Class "A" Members entitled to cast a majority of total Class "A" votes in the Association, plus the Class "B" Member's consent if the Class "B" membership still exists.

ARTICLE 10

STANDARDS OF CONDUCT; LIABILITY AND INDEMNIFICATION

Section 10.1 Standards for Directors and Officers. The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Association Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under state law and as otherwise provided by the Association Documents, directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under the South Carolina Nonprofit Corporation Act.

Section 10.2 Liability.

(a) A director shall not be personally liable to the Association, any Member, or any other person for any action taken or not taken as a director if the director has acted in accordance with Section 10.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

- (i) acts within the expressed or implied scope of the Association Documents;
- (ii) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;
- (iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and
- (iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers

and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

Section 10.3 Indemnification. Subject to the limitations of South Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the South Carolina Nonprofit Corporation Act; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

- (i) appropriation, in violation of his or her duties of any business opportunity of the Association;
- (ii) intentional misconduct or knowing violation of the law;
- (iii) an unlawful distribution to members, directors or officers; or
- (iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 10.4 Advancement of Expenses. Subject to the requirements and limitations of South Carolina law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

ARTICLE 11 ENFORCEMENT

Section 11.1 Covenants Committee. The Board of Directors may appoint a Covenants Committee consisting of three (3) Members. Acting in accordance with the provisions of the Declaration and these By-Laws, the Covenants Committee, if established, shall be the hearing

tribunal of the Association and shall conduct all hearings held pursuant to this Article 11 of these By-Laws. The Board of Directors shall also serve as a Board of Appeals to handle appeals from decisions of the Covenants Committee in accordance with such procedures as the Board may establish.

Section 11.2 Notice and Hearing Procedures. The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Association Documents. To the extent specifically required by the Declaration, the Board of Directors and/or Covenants Committee, if applicable, shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board of Directors or the Covenants Committee, if applicable, shall serve the alleged violator with a written demand to cease and desist from the alleged violation that specifies:

- (i) the alleged violation;
- (ii) the action required to abate the violation; and
- (iii) a time period of not less than five (5) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the Rules and Regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Notice of Hearing. If the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs within twelve (12) months of such demand, the Board or Covenants Committee, if applicable, may serve such person with written notice of a hearing to be held by the Board or Covenants Committee, as applicable, in executive session. The notice shall contain:

- (i) the nature of the alleged violation;
- (ii) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
- (iii) an invitation to attend the hearing and produce any statement, evidence and witnesses on his/her behalf; and

(c) Hearing. The hearing shall be held by the Board or the Covenants Committee, as applicable, pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by

the officer, director or other individual who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

Section 11.3 Right of Appeal. If a Covenants Committee is established, a violator shall have the right to appeal any adverse decision by the Covenants Committee to the Board of Directors in accordance with procedures that the Board may establish. To exercise this right, a written notice of appeal must be received by the Association's managing agent, President, or Secretary within ten (10) days after receipt of notice of the adverse decision of the Covenants Committee. The Board may accept such written statements as it deems appropriate to assist it, but shall not be required to conduct the hearing.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Conflicts. If there are conflicts among the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 12.2 Books and Records.

(a) Inspection by Members. The Board of Directors shall make available for inspection by any Member, at any reasonable time and for a purpose reasonably related to his or her interest in a Unit the Association Documents, the accounting records, the minutes of meetings of the Members, the Board of Directors, and committees, and any other organizational records as defined by South Carolina law. The Board of Directors shall provide for such inspection to take place at the Association's office or at such other place within the Community as the Board of Directors shall designate. The Board of Directors shall establish rules with respect to:

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

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

Section 12.3 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these

By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally, or if sent by electronic mail or United States mail, first class postage prepaid:

- (a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;
- (b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or
- (c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 12.4 Amendments. For so long as the Class "B" Member controls the Board of Directors, the Class "B" Member shall have the right to amend these By-Laws. These By-Laws may also be amended upon resolution of the Board of Directors and approval by Class "A" Members entitled to cast a majority of the votes represented at a meeting at which a quorum is present, except that no amendment that would materially affect the rights of the Declarant or Class "B" Member under these By-Laws or other Association Documents shall be valid without the prior written consent of the Declarant. Notice of proposed amendments subject to the approval of the Members shall be published in the Association's official publication or sent by mail to each Member at least thirty (30) days prior to the meeting at which such amendment is to be considered, or at least thirty (30) days prior to the close of balloting if no meeting is to be held.