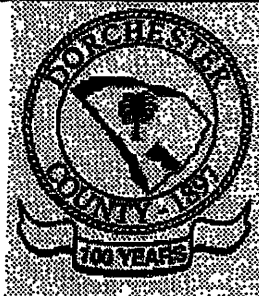


BK 6035PG061

FILED - RECORDED
RMC / ROD

2007 MAY 22 PM 3:30

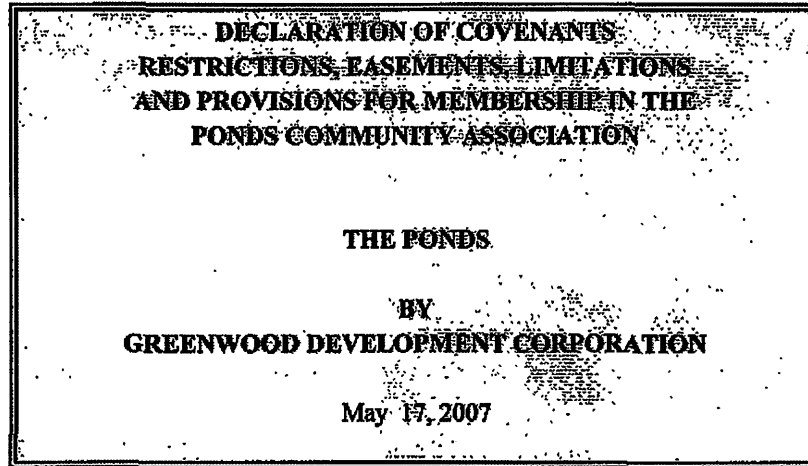
MARGARET L. BAILEY
DORCHESTER COUNTY, SC



**THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.**

**REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181**

76 w



**This Document is the Property of Greenwood Development Corporation
Copyright 2007 Greenwood Development Corporation**

Prepared by and return to:

Cary S. Griffin
McNair Law Firm, P.A.
23-B Shelter Cove Lane, Suite 400
Post Office Drawer 3
Hilton Head Island, South Carolina 29926
843-785-2171

TABLE OF CONTENTS

PART ONE	1
GENERAL REFERENCES	1
ARTICLE I	
Introduction to The Ponds Community	1
Section 1.1 <u>Governing Documents; Scope and Applicability</u>	2
Section 1.2 <u>Definitions</u>	3
ARTICLE II	
Property Description/General Plan of Development	5
Section 2.1 <u>The Property</u>	5
Section 2.2 <u>Additional Property</u>	5
Section 2.3 <u>Excluded Property</u>	5
Section 2.4 <u>Withdrawal of Property</u>	6
Section 2.5 <u>General Plan of Development</u>	6
PART TWO	
LAND USE RESTRICTIONS	7
ARTICLE III	
General Land Use Restrictions and Obligations	7
Section 3.1 <u>Use of Property</u>	7
Section 3.2 <u>Architecture and Landscaping - General</u>	8
Section 3.3 <u>Design Review</u>	9
Section 3.4 <u>Guidelines and Procedures</u>	10
Section 3.5 <u>No Waiver of Future Approvals</u>	11
Section 3.6 <u>Variances</u>	11
Section 3.7 <u>Limitation of Liability</u>	11
Section 3.8 <u>Certificate of Compliance</u>	12
Section 3.9 <u>Construction and Compliance Deposit</u>	12
Section 3.10 <u>Specific Construction Related Restrictions</u>	13
Section 3.11 <u>Miscellaneous Restrictions</u>	15
ARTICLE IV	
Environmental Controls	18
Section 4.1 <u>Topography and Vegetation</u>	18
Section 4.2 <u>Certain Controls</u>	18
Section 4.3 <u>Environmental Hazards</u>	18
Section 4.4 <u>Erosion in Common Properties</u>	18
Section 4.5 <u>Wetland Easements</u>	18
ARTICLE V	
Special Restrictions Affecting	
Open Space Areas	19
Section 5.1 <u>Declarant's Intention for Open Space</u>	19
Section 5.2 <u>Conservation Area</u>	19
Section 5.3 <u>Erosion Prevention Activities</u>	19
Section 5.4 <u>Dumping Prohibited</u>	19
Section 5.5 <u>Consistent Rights to Use Reserved</u>	19
Section 5.6 <u>Corrective Action No Trespass</u>	20
Section 5.7 <u>No General Easement Intended</u>	20
Section 5.8 <u>No Affirmative Action Required of Declarant</u>	20
Section 5.9 <u>Declarant Rights Assignable</u>	20

PART THREE		
PROVISIONS FOR PONDS COMMUNITY ASSOCIATION		20
ARTICLE VI		
<u>Ponds Community Association</u>		20
<u>Section 6.1</u>	<u>Function of the Association</u>	20
<u>Section 6.2</u>	<u>Membership</u>	20
<u>Section 6.3</u>	<u>Weighted Assessments</u>	20
<u>Section 6.4</u>	<u>Voting</u>	22
<u>Section 6.5</u>	<u>Specific Areas of the Community (or "Sections")</u>	24
<u>Section 6.6</u>	<u>By-Laws</u>	24
<u>Section 6.7</u>	<u>Powers and Duties of Declarant/PCA</u>	24
ARTICLE VII		
<u>Duties, Obligations, Authority and Services of The Ponds Community Association ("PCA")</u>		25
<u>Section 7.1</u>	<u>PCA</u>	25
<u>Section 7.2</u>	<u>Limitation on Duties and Obligations</u>	25
<u>Section 7.3</u>	<u>Powers of the PCA</u>	25
<u>Section 7.4</u>	<u>Ownership and Maintenance of Common Property</u>	25
<u>Section 7.5</u>	<u>Authorized Services</u>	25
<u>Section 7.6</u>	<u>Mortgage and Pledge</u>	26
<u>Section 7.7</u>	<u>Information</u>	27
<u>Section 7.8</u>	<u>Insurance Requirements</u>	27
<u>Section 7.9</u>	<u>Indemnification</u>	28
<u>Section 7.10</u>	<u>Implied Rights; Board Authority</u>	29
<u>Section 7.11</u>	<u>Security</u>	29
<u>Section 7.12</u>	<u>Administration of Changes in Ownership</u>	29
ARTICLE VIII		
<u>PCA Finances</u>		30
<u>Section 8.1</u>	<u>Authorized Association Expenses</u>	30
<u>Section 8.2</u>	<u>Budget Process; Right to Disapprove; Reserves</u>	30
<u>Section 8.3</u>	<u>Base Assessment</u>	31
<u>Section 8.4</u>	<u>Administrative/Transfer Fee</u>	31
<u>Section 8.5</u>	<u>Special Assessments</u>	31
<u>Section 8.6</u>	<u>Specific Assessments</u>	31
<u>Section 8.7</u>	<u>Working Capital Assessment</u>	32
<u>Section 8.8</u>	<u>Authority to Assess Owners; Time of Payment</u>	32
<u>Section 8.9</u>	<u>Obligation for Assessments</u>	32
<u>Section 8.10</u>	<u>Lien for Assessments</u>	33
<u>Section 8.11</u>	<u>Exempt Property</u>	34
<u>Section 8.12</u>	<u>Community Enhancement Fee</u>	34
<u>Section 8.13</u>	<u>Exempt Transfers</u>	35
ARTICLE IX		
<u>Common Property</u>		35
<u>Section 9.1</u>	<u>Members' Easements of Enjoyment of Common Property</u>	35
<u>Section 9.2</u>	<u>Title to Common Property</u>	35
<u>Section 9.3</u>	<u>Extent of Members' Easements</u>	35
<u>Section 9.4</u>	<u>Use of Common Property; Liability of PCA and Declarant</u>	36
ARTICLE X		
<u>Rules and Regulations</u>		36
<u>Section 10.1</u>	<u>Establishment of Rules and Regulations</u>	36
<u>Section 10.2</u>	<u>Authority and Enforcement</u>	37
<u>Section 10.3</u>	<u>Procedure</u>	37

ARTICLE XI

<u>Easements</u>	38
Section 11.1 <u>Easements in Common on Common Property</u>	38
Section 11.2 <u>Easements for Encroachments</u>	38
Section 11.3 <u>Easement for Utilities, etc</u>	38
Section 11.4 <u>Easements to Serve Additional Property</u>	39
Section 11.5 <u>Easements for Maintenance, Emergency, and Enforcement</u>	39
Section 11.6 <u>Easements for Wetland, Pond Maintenance and Flood Water</u>	40
Section 11.7 <u>Easement to Inspect and Right to Correct</u>	40
Section 11.8 <u>Access Easement for PCA</u>	40
Section 11.9 <u>Governmental Easement</u>	40

ARTICLE XII

<u>Limited Common Areas</u>	41
Section 12.1 <u>Purpose</u>	41
Section 12.2 <u>Designation</u>	41

ARTICLE XIII

<u>Party Walls and Other Shared Structures</u>	41
Section 13.1 <u>General Rules of Law to Apply</u>	41
Section 13.2 <u>Maintenance; Damage and Destruction</u>	41

PART FIVE

<u>GENERAL PROVISIONS</u>	41
----------------------------------	----

ARTICLE XIV

<u>General Rights Reserved by Declarant</u>	41
Section 14.1 <u>Rights, Easements Retained by Declarant</u>	41
Section 14.2 <u>Permits and Approvals</u>	42
Section 14.3 <u>Ingress and Egress; Roadways</u>	42
Section 14.4 <u>Additional Covenants</u>	43
Section 14.5 <u>Duration of Covenants</u>	43
Section 14.6 <u>Remedies in the Event of Violation or Breach</u>	43
Section 14.7 <u>Declarant Approval</u>	43
Section 14.8 <u>Right to Transfer or Assign Declarant Rights</u>	43
Section 14.9 <u>Use of Trademark</u>	43
Section 14.10 <u>Right to Develop</u>	44
Section 14.11 <u>Termination of Rights</u>	44
Section 14.12 <u>View Impairment</u>	44
Section 14.13 <u>Right of Repurchase</u>	44

ARTICLE XV

<u>Amendments</u>	44
Section 15.1 <u>Amendments</u>	44

ARTICLE XVI

<u>Notice</u>	45
Section 16.1 <u>How Notice Given</u>	45
Section 16.2 <u>Notice to Co-Owners</u>	45
Section 16.3 <u>Notice of Address or Ownership Change</u>	45

ARTICLE XVII

<u>Enforcement, Severability and Interpretation</u>	45
Section 17.1 <u>Who May Enforce Generally</u>	45
Section 17.2 <u>Attorney Fees</u>	45
Section 17.3 <u>Against Whom May the Covenants be Enforced</u>	45

<u>Section 17.4</u>	<u>Litigation</u>	46
<u>Section 17.5</u>	<u>Means of Enforcement</u>	46
<u>Section 17.6</u>	<u>Severability</u>	46
<u>Section 17.7</u>	<u>Rule Against Perpetuities</u>	46
<u>Section 17.8</u>	<u>Interpretation</u>	46
<u>Section 17.9</u>	<u>Authorized Action</u>	46
<u>Section 17.10</u>	<u>Gender, Tense and Number</u>	46
<u>Section 17.11</u>	<u>No Waiver</u>	46
<u>Section 17.12</u>	<u>Captions</u>	46
<u>Section 17.13</u>	<u>No Implied Liabilities or Duties</u>	47
 PART SIX		
	PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS	47
 <u>ARTICLE XVIII</u>		
	<u>Dispute Resolution and Limitation on Litigation</u>	47
<u>Section 18.1</u>	<u>Agreement to Encourage Resolution of Disputes Without Litigation</u>	47
<u>Section 18.2</u>	<u>Dispute Resolution Procedures</u>	47
<u>Section 18.3</u>	<u>Initiation of Litigation by PCA</u>	49
 EXHIBIT "A"		
		50
 EXHIBIT "B"		
		51
 EXHIBIT "C"		
		52

whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the land herein referred to as the Property, and these Covenants are intended to be covenants and servitudes burdening and benefitting all persons now or hereafter deriving a real property estate in the Property whether by assignment, succession or inheritance or other method of conveyance.

CHART A: Governing Documents

<u>Document</u>	<u>Brief Description</u>
Development Agreement (recorded)	This is an agreement between the Declarant, as landowner, and Dorchester County, setting forth certain terms and conditions relating to the development of The Ponds Community, which is referenced in the Development Agreement as a Planned Development (PD).
Declaration of Covenants, etc. (recorded)	This Declaration is similar to a charter or organizational document created for The Ponds Community which establishes obligations that are binding upon the Association, as well as on all present and future Owners of property within The Ponds Community.
Supplemental Declaration (recorded)	The Declaration may be amended from time to time by recorded supplements, the purpose of which may be to submit additional property to the Declaration, create easements over property described in the Supplement, impose additional obligations or restrictions on such property, designate service areas or limited common areas as described in this Declaration, or set forth additional use restrictions on property being added to the Declaration.
Articles of Incorporation (filed with South Carolina Secretary of State)	The Articles of Incorporation of Ponds Community Association are to be filed with the South Carolina Secretary of State, as may be amended ("Articles") which Articles establish the Association as a not-for-profit corporation under South Carolina law.
By-Laws (recorded)	The By-Laws of the Ponds Community Association, adopted by the Board of Directors, as they may be amended ("By-Laws") govern the Association's internal affairs such as voting, elections, meetings, etc. The initial version of the By-Laws is attached to this Declaration as Exhibit "C".
Design Guidelines (unrecorded)	The Design Guidelines are adopted by the Declarant and set forth design, architectural and aesthetic guidelines governing new construction and modifications to single-family residential, multi-family, commercial and civic properties within The Ponds Community, including structures, landscaping and other items. There may be different sets of Design Guidelines for each of the various uses within the Community.
Rules and Regulations, if adopted, shall be unrecorded	The rules and regulations of the Association if adopted pursuant to Part Three of this Declaration shall regulate the use of property, activities and conduct within The Ponds Community.
Board Resolutions (adopted from time to time)	These are resolutions which the Board of the Association adopts from time to time to establish rules, policies, and procedures for the internal governance and Association activities, and to regulate the operation and use of property which the Association owns or controls.

Section 1.1 Governing Documents: Scope and Applicability. The Ponds Community has been established and is administered pursuant to various documents that have a legal and binding affect on all Owners and occupants of property in The Ponds Community, as well as on anyone else that may now, or in the future, have an interest in any portion of the property comprising The Ponds Community, such documents referred to in this Declaration as the "Governing Documents", including the Declaration and the other documents described above in Chart A, as they may be amended from time to time. All Owners and occupants, as well as their tenants, guest and invitees, are required to comply with the Governing Documents.

Section 1.2 Definitions. There are many "defined terms" utilized throughout this Declaration. For convenience, these are capitalized. The following words and terms, when used in this Declaration, or any Supplemental Declaration, unless the context clearly shall indicate otherwise, shall have the following meanings. This listing is not intended to be all inclusive, there being additional defined terms contained within the body of the Declaration.

"Assessment" means the assessment levied against Units pursuant to Article VIII to fund Common Expenses, reference being made to Article VIII for a description of the different types of assessments.

"Association" or "PCA". Refers to the Ponds Community Association, a South Carolina not-for-profit corporation which Declarant has formed or will cause to be formed.

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

"By-Laws". The By-Laws of Ponds Community Association, as amended from time to time. A copy of the initial By-Laws is attached to this Declaration as **Exhibit "C"**.

"Common Property". Those areas of land, together with improvements thereon, if any, which are deeded to the PCA and designated in said deed as Common Property. The term "Common Property" shall include Limited Common Property as defined below and any personal property acquired by the PCA, if said property is designated as "Common Property." All Common Property is to be devoted to and intended for the common use and enjoyment of the Owners of the Property. The term "Common Property" shall also refer to all easements reserved and areas provided for common use and enjoyment of Owners, and designated as Common Property on the plats referred to in **Exhibit "A"** or any other approved plat or master plan evidencing a specific intent to designate Common Property, whether or not such property has been actually conveyed to the PCA, and whether or not such Common Property is presently designated on the existing master plan or subsequently designated by Declarant, which shall be at Declarant's sole discretion. The term "Common Property" may also refer to any easements reserved by Declarant, or granted to Declarant, over a Unit, which easement area is intended for the common use and enjoyment of the Owners of the Property, whether or not said areas are designated on the recorded plat. The term "Common Property" may also include certain Open Space designated by Declarant in plats filed of record. Declarant may likewise modify any Common Property designation prior to actual conveyance to the PCA, at Declarant's discretion.

"Community". Refers to the project as a whole and is sometimes referred to as "The Ponds".

"Community-Wide Standards". The standard of conduct, maintenance, or other activity generally prevailing within The Ponds, or the minimum standards established pursuant to the Design Guidelines, Governing Documents and Board resolutions, whichever is the higher standard. Such standard shall be established initially by Declarant and may contain both objective and subjective elements. The Community-Wide Standards may evolve as development progresses.

CHART B

COMMUNITY-WIDE STANDARDS The higher of:		
MINIMUM STANDARDS Design Guidelines Governing Documents Resolutions of Board Example set by Declarant, Board	OR	PREVAILING STANDARD

"Conservancy". A separate and distinct not-for-profit corporation organized under South Carolina law known as "The Ponds Conservancy" which is established for the stated purpose set forth in its Articles, and briefly described in Section 8.12 below.

"Covenant to Share Costs". Any agreement, declaration of easements and covenant to share costs, or similar instrument executed and recorded by Declarant, or Declarant's successors or assigns, or the Association which creates easements for the benefit of the Association, the Owners, or the Conservancy or its members and/or which obligates the Conservancy and/or the Association and/or the Owners to share costs relating to the maintenance and operation of shared property or the provision of shared services described in such Covenant to Share Costs.

"Declarant". Greenwood Development Corporation and its successors and assigns other than purchasers of Units within the Community.

"Design Guidelines". The guidelines and standards for architecture, design, construction, siting, landscaping and exterior items on residences adopted pursuant to Article III, as amended from time to time.

"Design Review Board ("DRB"). The architectural, site, and landscaping review board described in Section 3.3 of this Declaration.

"Development Agreement". The Agreement entered into by Declarant with Dorchester County on December 12, 2005, which is recorded in the RMC Office for Dorchester County in Book 5100 at Page 2, et seq.

"Examiner". This is the entity having jurisdiction over the Design Review process at any particular time, as referenced in Section 3.3.

"Governing Documents". A collective term referring to this Declaration and any applicable Amendment or Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, Board Resolutions and the Rules and Regulations, if adopted, all as they may be amended.

"Limited Common Areas". A portion of the Common Property primarily benefitting one or more, but less than all, Units, as more particularly described in Article XII.

"Multi-Family". Refers to any structure which includes two or more attached residential dwelling Units, which are condominium Units in a horizontal property regime, or apartments, and which are used for residential purposes.

"Owner". The record Owner whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Units situated upon the Property, but shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of the Owner. All those Owners shall be members of the Association as provided herein and may be referred to as "Members".

"Parcel". This shall be deemed to be a single Unit until such time as a recorded plat subdivides all or a portion of the parcel or otherwise creates, designates, or describes Units within a parcel. After such a plat is recorded, the parcel shall contain the number of Unit shown, created, designated, or described on the recorded plat.

"Property". Refers to the real property described in Article II, Section 2.1 hereof.

"Rules and Regulations". The rules and regulations if adopted by the Board, and as subsequently supplemented, modified and/or repealed as provided herein.

"Section". A group of Units designated in distinct geographical areas within the Community pursuant to Section 6.5 for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the PCA which are not provided to all Units within the Community.

"Section Expenses". The actual and estimated expenses which the PCA incurs or expects to incur for the benefit of Owners within a particular Section or Sections, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Section(s).

"Supplemental Declaration". An instrument recorded pursuant to Article II which subjects additional property to this Declaration and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument.

"Unit". A portion of The Ponds, whether improved or unimproved, which may be independently owned and is intended for development, use and occupancy as either a residential (single family and multi-family), commercial (including retail) or civic

Unit. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall not apply to the Common Property. The boundaries of each Unit shall be shown, described or referenced on a plat, recorded survey, restrictive covenants, or a deed; provided that in the case of a building containing multiple dwellings for independent sales (e.g. attached condominium, townhouse, or Units) each dwelling which may be sold independent shall be considered a separate Unit. A Unit intended for development, use, and occupancy as an attached (e.g., townhome) or detached single-family residence is sometimes referred to herein as a "Residential Unit". A Unit Declarant approves for any non-residential purpose (e.g. a Unit reserved for civic, retail or commercial use) or which is shown on the master plan for the Community as being designated for such non-residential purposes, is sometimes referred to as a "Non-Residential Unit".

"Village Center". Refers to the portion of the Community ultimately to be developed into the "Downtown" or "Commercial Center" of the Community to contain the mix of commercial and retail Units, including residential Units which may include, "live/work" Units.

ARTICLE II

Property Description/General Plan of Development

Section 2.1 **The Property.** The real property ("the Property") which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants, is described in Exhibit "A" to these Covenants. The Property is sometimes referred to as Phase 1 in The Ponds literature.

Section 2.2 **Additional Property.** In addition to the Property described in Section 2.1 above, wherever used in these Covenants the term "the Property" shall also mean and refer to all property voluntarily submitted to this Declaration by Declarant, without consent of the PCA, or by the owner(s) of such property if Declarant is not the owner, with the consent of Declarant ("Additional Property"). The intent of this Section is to confirm that The Ponds is a phased development project with future phases to consist of additional property, contiguous to or nearby the Property. Such Additional Property does not necessarily have to be owned by Declarant now, as of the date of this Declaration, and does not have to be subject to the Development Agreement referenced herein. "Additional Property" includes, but is not necessarily limited to, the property described on Exhibit "B" to these Covenants. Subject to the outside time frame referenced below, Declarant shall have the unrestricted right to submit such Additional Property to these Covenants. Such submission of Additional Property shall become effective upon filing a document of record in the RMC Office for Dorchester County, South Carolina, by Declarant, describing such property and stating the intent to be bound hereby and submitted hereunder. Said document shall be known as a Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording in Dorchester County unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any Additional Property subjected to this Declaration shall be assigned voting rights and assessment obligations in accordance with the provision of this Declaration.

Declarant's right to expand The Ponds pursuant to this section shall expire twenty-five (25) years after this Declaration is recorded. Until then, Declarant may transfer or assign this right to an assignee by virtue of a written recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require Declarant to subject Additional Property to this Declaration.

PCA may also subject property to the provisions of this Declaration by recording a Supplemental Declaration describing the proposed Additional Property. Any such Supplemental Declaration shall require the affirmative vote of more than fifty (50%) percent of the Class "A" Members represented at a meeting duly called for such purpose and the consent of such owner(s) of the property. In addition, so long as Declarant owns property subject to this Declaration, or which may become subject to this Declaration pursuant to this section, Declarant's consent shall also be necessary.

Section 2.3 **Excluded Property.** It is specifically noted by Declarant that, as of the time of filing this Declaration, certain parcels or tracts of land currently owned by Declarant and part of the overall conceptual master planned area known as The Ponds pursuant to the Development Agreement, as well as certain parcels or tracts lying outside the conceptual master plan, have not been included with the Exhibit "A" Property and are not subject to the Covenants. Nonetheless, these properties may subsequently be developed by Declarant, or its assigns or designees, at Declarant's sole discretion and may be made subject to these Covenants, or may be subsequently conveyed by Declarant to others for development outside and apart from this Declaration.

Section 2.4 **Withdrawal of Property.** Declarant reserves the right to amend this Declaration as long as it is a Class "B" Member described below in Section 6.4, for the purpose of removing any portion of the Property owned by Declarant, or owned by another person if expressly approved by Declarant, from the coverage of this Declaration. Such amendment shall not require the consent of any person other than the owner of the Property to be withdrawn, if not the Declarant. If the Property is Common Property, PCA's consent to such withdrawal shall be obtained.

Section 2.5 **General Plan of Development.**

(a) For purposes of these Covenants the phrase "master plan" shall mean and refer to conceptual master plans, general land use maps, advertising brochures, designs and drawings commissioned by Declarant and prepared by landscape architects, planners, designers, engineers, graphic illustrators and artists and similar professionals displaying possible future uses of the Property, prepared as an aid for orderly development of the Property or as part of its communications with the public and property purchasers, or as part of its research programs undertaken by Declarant for future development of the Property. Declarant intends to develop the Property in accordance with its own conceptual master plan, as modified from time to time, as a community featuring common facilities, various amenities, and any other lawful activities which Declarant deems appropriate as uses for such Property. Contemplated uses include residential (both single-family and multi-family), commercial (including retail) and civic (including educational uses and conservation areas). Declarant reserves the right to review, add to, subtract from and modify its master plan at its sole option from time to time both prior to and after construction of any improvements. No implied reciprocal equitable servitudes or easements shall arise with respect to any lands retained by Declarant.

(b) It is the intention of Declarant to convey to the PCA the Common Property as defined herein. In general, the timing of the conveyance shall be at Declarant's discretion. Declarant shall not be required to follow any pre-determined sequence or order of improvements and developments.

(c) In general, all future Owners of Units within the Property and Members of the PCA recognize that Declarant will have portions of the Community under development for an extended period of time. With development comes construction and, at times, interference with the quiet enjoyment of the Property. As stated above, Declarant has presented to the public master plan materials showing possible future development of the Property and, as of the date of this Declaration, has also already constructed certain improvements and facilities in the form of roadways, common areas and facilities as part of Phase 1. The designs in the master plan, or how any portions of the future improvements to the Property will actually be developed, or how any portions of the existing improvements may be modified, cannot be guaranteed by Declarant at this point in time. All purchasers of Units within the Property accept that any such renderings, plans or models as part of the master plan materials are preliminary and do not necessarily represent the final development plan of the Property. All Owners further agree that Declarant shall have the sole right of design, construction, development, improvement and modification of existing and future improvements of the Property.

(d) Declarant reserves the right to use any portion of the Property not conveyed to others for "agricultural" purposes, as commonly defined in South Carolina Code §12-31-230 as it may be amended from time to time, and Declarant reserves the right to permit such use by others.

Declarant expressly disclaims that any such rights shall arise or any restraints be created, by any reference or depiction of land use as shown on any master plan.

**PART TWO
LAND USE RESTRICTIONS**

**ARTICLE III
General Land Use Restrictions and Obligations**

Section 3.1 Use of Property.

(a) Declarant does hereby declare that the portions of the Property designated as Residential Units ("Residential Section") which are the subject of this Declaration shall be utilized for residential purposes. Any business, trade, or similar activity is prohibited within the Residential Section of The Ponds unless expressly authorized by, and then subject to such conditions as may be imposed by the Board, except that an Owner residing in a Residential Unit may conduct business activities within the Residential Unit so long as:

(i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Residential Unit;

(ii) the business activity conforms to all zoning requirements for The Ponds, if any, adopted by Dorchester County;

(iii) the business activity does not involve door-to-door solicitation of residents of The Ponds;

(iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in The Ponds which is noticeably greater than that which is typical of Residential Units in which no business activity is being conducted; and

(v) the business activity is consistent with the residential character of the Residential Section of The Ponds, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other residents of The Ponds, as may be determined in the Board's discretion.

The terms "business" and "trade," as used in this provision, shall have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The above restrictions shall not be interpreted as preventing Declarant or its agents from maintaining sales offices, model homes, including signage pertaining thereto, or real estate sales related promotional activities upon the Residential Section so long as Declarant owns any Unit within the Property, or upon any Additional Property, as described in Article II hereof. Further, this prohibition shall not be interpreted as preventing Declarant, and/or its successors and assigns, from maintaining common facilities, and other "for-profit" organizations within the boundaries of the Community. Furthermore, this Section shall not prevent Declarant or the PCA from charging user fees or rentals in conjunction with the use of Common Property. Further, the Development Agreement contemplates certain mixed use areas within the Community, such as a "live/work" area where residential might be combined with a commercial use. Declarant contemplates such a mixed use in future areas of the Community and the above residential restrictions are not intended to prevent such development. Notwithstanding the above, Owners may have home offices located on the Property, provided that said office does not regularly have business visitors, nor involve sales or storage of inventory or increase traffic or include frequent deliveries within the Community, and so long as the office activity is consistent with the residential character of the Property and does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other residents of the Community. For the purposes of this provision, multiple residences on a Unit shall not be prohibited, though such residences must be consistent with the Design Guidelines, the Community-Wide Standard, and specifically approved by Declarant or the DRB as set forth below.

(b) **Civic/Commercial Uses.** Declarant does hereby declare that certain portions of the Exhibit "A" Property have been designated as civic and certain other portions as commercial. There are two (2) specifically designated civic areas, one including the site for the Summerville Family YMCA Regional Facility which is intended to be a full service

recreational/activity facility intended to benefit the entire Summerville Community; and the other including a specific parcel designated for public safety purposes in the form of an emergency medical service facility (EMS). Also, Declarant specifically notes that a portion of the Exhibit "A" Property includes site which has been designated for the sales center, which may be converted to office or other commercial retail use. By referencing the specific civic and commercial uses as part of the Exhibit "A" Property, there is no intent on the part of Declarant to limit any additional commercial and/or civic uses for the Additional Property referenced herein. By way of example, and not by limitation, the Additional Property may include a school site which would be another civic use.

(c) Declarant further discloses that it may include additional restrictions or modifications in deeds to various properties, including any Additional Property, or in various Sections, to further define and/or supplement the scope of these general use conditions set forth in the Declaration. The allowance or approval of a proposed use under this Article III shall not be interpreted as a representation that such use complies with any applicable governmental zoning and/or land use regulation. Such regulations may apply further use restrictions in addition to the above. Furthermore, with regard to such Additional Property, the type and size of future development and Units shall be at the sole discretion of Declarant, its successors and assigns and Declarant, at its discretion, may define allowed uses on said property at that time, which may include uses not allowed on the original Property. By way of example, and not by limitation, Declarant contemplates that the future Village Center is The Ponds may include a mix of office, retail and residential uses, including a "live/work" type of unit with living quarters over commercial areas. Absent such further definition of, and/or supplementary provisions regarding use however, the provisions of this Declaration shall be applicable to such Additional Property.

Section 3.2 Architecture and Landscaping - General.

Note: The Community-Wide Standards for use and conduct, maintenance and architecture within The Ponds helps make it a desirable place to live, work and do business. Each property owner, lessee and other occupant must participate in upholding such standards. This Declaration establishes procedures for adopting, modifying and enforcing such standards while providing flexibility for the Community-Wide Standards to evolve over time.

(a) Approval Required. No structure or thing shall be placed, erected, or installed upon any Unit and improvements or other work (including staking, clearing, excavation, grading and other work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Community, except in compliance with this Article III and the Design Guidelines. For purposes of this Article III, "structure" and "improvement" are to be broadly construed and shall include, without limitation, site work, landscaping, structures (habitable or non-habitable), telecommunications equipment, sports play and maintenance equipment, yard and decorative items and similar items placed or stored in any Unit in a manner or location visible from outside of any existing structure.

All structures constructed on any portion of a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion. The number of structures on any Unit is subject to approval. If more than one (1) residence is planned for a Residential Unit, a phasing plan must be included in the submission to the DRB, as described below. Each Unit's design and construction plans shall include a drainage plan, subject to Design Review. Drainage systems shall be designed so that there is no direct discharge or runoff into the adjoining wetlands or creeks without proper filtration. If the Unit has a drainage system, the design of the drainage and filtration system shall be subject to review and approval by the Declarant or the DRB. The Design Guidelines may provide that, in connection with the DRB's approval and to prevent excessive drainage or surface water runoff, the DRB may have the right to establish a maximum percentage of property which may be covered by buildings, structures, or other improvements, which guidelines may be promulgated on the basis of topography, percolation rates of the soil, soil types and conditions, vegetation cover, and other environmental factors, or to impose guidelines for the installation of storm water management facilities deemed appropriate to limit or control runoff.

(b) Approval Not Required. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a structure on his or her Unit without approval except that

modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

[Note: This Section 3.2, and the following Sections 3.3 through 3.9 shall not apply to Declarant's activities.]

Section 3.3 Design Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Community, acknowledges that, as the developer of the Community and as an owner of portions of the Community as well as other real estate within the vicinity of the Community, Declarant has a substantial interest in ensuring that the improvements within the Community enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, no activity within the scope of this Article III shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Exhibit "A" or Exhibit "B" properties or has the right to add property per Article II, unless earlier terminated in a written instrument which Declarant has executed and recorded.

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

Declarant may, from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) a Design Review Board (the "DRB") appointed by Declarant, or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the PCA. Any such delegation shall be in writing specifying the scope of responsibilities delegated and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article III, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

(b) Design Review Board. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the PCA, acting through the DRB, shall assume jurisdiction over design matters. The DRB, when appointed, shall consist of at least three (3), but not more than seven (7), persons who shall serve and may be removed and replaced in the Board's discretion. The members of the DRB need not be Members of the PCA or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount if any, as the Board may establish.

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

Note: All references to Declarant, PCA, or DRB in this Article are intended to be applicable to the entity which possesses the authority at the specific time. All references to "Declarant" shall be construed to mean Declarant's successors and assigns, namely PCA and/or DRB, even if not explicitly stated.

Note: For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Examiner."

(c) Fees; Assistance. The Examiner may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the PCA may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the PCA's annual operating budget.

Section 3.4 Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions which vary, depending upon the type of Unit and the Section in which it is located, i.e., Residential Unit, multi-family, commercial, retail and civic (see Section 3.10 below). Declarant may determine to supplement, and/or to have a separate set of, Design Guidelines for any of these uses. While the Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Examiner in considering applications, they are not the exclusive basis for decisions of the Examiner and compliance with the Design Guidelines does not guarantee approval of any application.

The initial Design Guidelines are entitled "Design Guidelines for The Ponds Community" and are primarily aimed at Residential Units. The Design Guidelines and any further supplements or different versions of same stand on their own and are not to be considered part of these Covenants. Declarant shall have the sole authority to amend, supplement or create new Design Guidelines as long as it owns any portion of or has a right to expand the Community pursuant to Article II, notwithstanding a delegation of reviewing authority to the DRB, unless Declarant also delegates the power to amend to the DRB. For example, it is likely that Declarant will create separate versions of Design Guidelines for Non-Residential Units, for Multi-Family Units and for the Village Center Section. Upon termination or delegation of Declarant's right to amend, the DRB shall have the authority to amend the Design Guidelines with the consent of the Board.

Any amendments, or new versions of, to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less, or more, restrictive.

The Examiner shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Community. In Declarant's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. All development and construction must be in compliance with Community-Wide Standards in addition to the Design Guidelines.

(b) Procedures.

(i) Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of a Unit within the Community until an application for approval has been submitted to and approved by the Examiner. Such application shall include plans and specifications showing site layout, floor plans, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, a phasing plan if more than one residence is planned for the Unit, and other features of proposed construction, as applicable. Either or both the Design Guidelines and the Examiner may require the submission of such additional information as may be reasonably necessary to consider any application.

(ii) In reviewing each submission, the Examiner may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Examiner shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

(iii) The Examiner shall make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Examiner may (A) approve the application, with or without conditions; (B) approve a portion of the application and disapprove other portions; or (C) disapprove the application. (Note: Until expiration of Declarant's rights under this Article III, the DRB shall notify Declarant in writing within three (3) business days after the DRB has taken action on any application within the scope of matters delegated to the DRB by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have ten (10) business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRB).

The Examiner shall notify the applicant in writing of the final determination on any application in a prompt and businesslike fashion. With respect to any determination by the DRB subject to Declarant's veto right, such notice shall be provided after the earlier of: (A) receipt of notice of Declarant's veto or waiver thereof; or (B) expiration of the time period for exercise of Declarant's veto.

(iv) In the event that the Examiner fails to respond in a timely manner, the Owner whose application was not acted upon shall be required to provide written notice to the Board, which notice shall constitute an automatic referral to the Board. The Board shall be obligated to answer any properly submitted written application for approval of a proposed structural addition, alternation or improvement within fifteen (15) days after the first Board of Directors meeting held following such referral to the Board, and failure to do so within the stipulated time shall constitute an approval by the Board. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 3.6. Notice shall be deemed to have been given at the time the envelope containing the response is deposited within the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

(v) If construction does not commence on a project for which plans have been approved within one (1) year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within twelve (12) months of commencement unless otherwise specified in the notice of approval or unless the Examiner grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, or if it is performed in violation of this Article III, including by way of example and not limitation, the construction related restrictions set forth in Section 3.10, *infra*, or in a manner inconsistent with the approved plans, it shall be considered nonconforming and shall be subject to enforcement action by the DRB, the PCA, Declarant or any aggrieved Owner.

Upon written request from the Declarant, the PCA, or the DRB, Owners shall, at their sole cost and expense, remove any non-conforming structure or improvement and restore the property to substantially the same condition as existed prior to the non-conforming work. Should an owner fail to remove and restore the Property as required, the Declarant, the DRB, and/or the PCA, or their designees, may take enforcement action pursuant to Section 3.11 (h) *infra*.

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

Section 3.5 No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under these Sections will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case the Examiner may, or may not, choose to require changes to improvements involved, but the Examiner may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans or other matters subsequently or additionally submitted for approval.

Section 3.6 Variances. The Examiner may, but shall not be required to, authorize variances from compliance with any of the Design Guidelines and its procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, or when design merit warrants such variance. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Examiner from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 3.7 Limitation of Liability. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any third parties. Review and approval of any application pursuant to this Article III may be made on the basis of aesthetic considerations only, and the Examiner shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the PCA, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder, any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Community; or any injury damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the PCA shall defend and indemnify the Board, the DRB, and the members of each as provided in Section 7.9.

Section 3.8 Certificate of Compliance. Upon completion of construction (which would require the Owner to have obtained a certificate of occupancy from the applicable municipal authorities), an Owner may request in writing that the Examiner issue a certificate of design compliance certifying that there are no known violations of this Article or the Design Guidelines. The Examiner shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates.

Section 3.9 Construction and Compliance Deposit.

(a) As a condition of granting any approval hereunder, and to assure Owner's completion of all structures, sitework and landscaping in accordance with the DRB approval, the Examiner may require the Owner of the Unit upon which construction is to take place, other than the Declarant and affiliates of the Declarant, to pay a construction/security and compliance deposit in order to provide security against damage to Common Property and other portions of the Community, to discourage noncompliance with this Declaration, the PCA's Rules and Regulations, if adopted, and the Design Guidelines as well as to assure Owner's completion of the landscaping approval as part of the DRB process ("Construction/Compliance Deposit" or "Deposit"). The Construction/Compliance Deposit shall be provided to the DRB prior to the commencement of any construction activity on the Unit. The Examiner may establish varying levels of Deposits or waive Deposits for different types of construction activities.

(b) All deposits shall be made in the form of collected funds and shall be held in an account maintained by and in the name of the PCA until receipt by the Examiner of (i) a copy of a certificate of occupancy issued by the appropriate governmental agency or other evidence of completion acceptable to the DRB; (ii) confirmation by the Examiner that all construction activity with respect to the Unit for which the deposit was made, including the landscaping, has been completed in accordance with the conditions of approval; and (iii) issuance of the certificate of compliance referenced in Section 3.8. Within thirty (30) days thereafter, the DRB shall refund the Deposit to the Owner, without interest, less any funds expended or to be expended by the DRB pursuant to this Section which have not been restored by the Owner. This account may, but need not be, interest-bearing, and any interest earned shall be the property of the PCA. The DRB may, at its sole discretion, choose to bifurcate the Deposit and continue to hold a portion of same, while refunding a portion, should circumstances call for such action.

(c) By way of illustration and not limitation, the Examiner may draw upon this Deposit as necessary to cover the costs of: (i) requiring adherence to the previously approved plans; (ii) assuring the continuous and uninterrupted construction; (iii) complete any landscaping not finished by the Owner in accordance with approved plans; (iv) providing maintenance to the construction site, or maintenance, repairs, or replacements to the Common Property, any of which become necessary as a result of the Owner's construction activities or the activities of its builders, subcontractors, employees, or agents; (v) paying accrued and unpaid fines, or Section 8.6 Specific Assessments, imposed for violations of this Declaration, the PCA Rules, if adopted, or the Design Guidelines in connection with construction of the Units; (vi) repairing damage to subdivision improvements caused by construction vehicles; or (vii) removing trash and construction debris not removed by the Owner.

(d) Nothing in this Section shall be construed as limiting the Examiner's right to seek reimbursement from the Owner for the total amount expended on the Owner's behalf in the event the amount expended exceeds the amount of the Construction Deposit, nor shall anything in this Section be construed to limit any of the rights or remedies granted to the Declarant, or its successors and assigns, by other provisions of this Declaration.

(e) Nothing in this Section shall be construed as limiting the Declarant's right to make alternate arrangements as to deposits with those builders who are part of any approved or preferred builder program established by the Declarant from time to time ("Approved Builders").

Declarant, upon assignment of its rights to the DRB or to PCA, shall assume no responsibility for the actions or inactions of the DRB and/or the PCA and all owners agree to hold Declarant harmless in the event of any damages suffered thereby.

Section 3.10 Specific Construction Related Restrictions. Set forth in this Section 3.10 are specific restrictions and guidelines related to construction of improvements by Owners of the Residential Units within the Property. The restrictions contained herein are subject to modification by virtue of the Design Guidelines from time to time.

(a) **Different Types of Residential Units.** There are two (2) different types of Residential Units within the initial phase of the Community, each of which has specific Design Guidelines to be followed:

(i) **Lots.** Homesites within the Community that are to be improved by detached dwellings, which homesites may have varying side yard setbacks ("Lots").

(ii) **Townhome Lots.** Homesites within the Community that are designed for townhome-type dwellings, either attached or zero Lot line ("Townhome Lots").

(b) **Multiple Residences/Maximum Square Footage.** Subject to DRB approval, up to two (2) residences may be built on any Residential Unit. These residences shall be known as the Main House and the Dependency (sometimes referred to as "Guest Quarters"). A detached garage shall be considered as a Dependency. The maximum square footage of enclosed dwelling area is as follows:

(i) **Main House.** Maximum of six thousand (6,000) square feet (conditioned).

(ii) **Dependency.** Thirty (30%) percent of the conditioned square footage of Main House up to nine hundred (900) square feet.

The term "enclosed dwelling area" as used in these size requirements is intended to be synonymous with "habitable area" and shall mean the total enclosed air conditioned area within a residence; provided, however, that such term does not include terraces, decks, open porches, basements and the like areas; provided, further, that shed-type porches, even though attached to the residence, are specifically excluded from the definition of the term "enclosed dwelling area". Any maximum square footage set forth herein is subject to specific site plan approval by the DRB and to any limitations imposed by the Development Agreement.

(c) **Other Uses.** Declarant reserves the right either in a supplement to this Declaration or via specific restrictions, covenants and conditions attached to and made a part of a deed conveying either a multi-family site to a third party for development of multi-family Units, or a commercial site for development of commercial and/or retail Units or a site designated for civic uses, to create specific construction related restrictions in addition to those restrictions contained in this Declaration and specifically in this Section 3.10.

(d) **Nature Curtains.** A nature curtain may be required on a Unit as a zone in order to preserve and enhance the natural habitat and rural character of the Unit and minimize the intrusion of manmade elements within a network of interconnected natural corridors located throughout the Community. Clearing and planting are restricted in such designated areas as set forth in the Design Guidelines or Community-Wide Standards. Walkways are allowed to cross the nature curtain to provide access to a Unit. Depending upon the type of Unit, the nature curtain must be taken into consideration by Owner in the DRB submission.

(e) **Site Coverage.** Lot and Townhome Lot coverage may be one of the considerations in the DRB review process and will be dependent on the type of Residential Unit as described in Section 3.10(a). In calculating the site coverage, the square footage comprising the approved detached buildings and paved areas and any area covered by an awning or the like which serve the function of the building shall be included. Lot and Townhome Lot coverage may be further restricted, as necessary, to comply with any governmental standards applicable to a particular Residential Unit or to the master plan.

(f) **Exterior Antennas, Satellite Receivers, Solar Panels, and Towers.** Television antennas, radio antennas, satellite receivers or other devices may be placed upon any Unit; provided, however, that the location of such devices, and the size, to be allowed is in the discretion of the DRB. In those cases when such devices are allowed, the Examiner shall have the right to regulate height, location and other aesthetic features, including the right to require appropriate natural or artificial screening. Notwithstanding the foregoing, the Declarant, and its successors and assigns, may regulate antennas, satellite dishes or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all Federal laws and regulations.

(g) **Tree Removal.** A "Grand Tree" means a tree twenty-four (24") inches or greater diameter at breast height (pines are included). The intent is that such Grand Trees are to be protected and not removed. Protected trees that need to

be removed require the approval of the DRB and may, in certain instances, require Dorchester County approval. Dorchester County Tree & Canopy Protection Standards as set forth in the County Zoning Ordinance shall be considered a minimum standard by the DRB. Further, no trees measuring six (6") inches or more in diameter at a distance of four (4') feet above ground level may be removed without the written approval of DRB or Declarant, unless located within an approved site for a building or driveway. This site layout submitted by Owner should attempt to place the house footprint in a way that avoids removing specific trees where possible

(h) Screening. Owners must construct a screening fence or natural buffer to shield and hide from view trash receptacles, electric and gas meters, air-conditioning equipment and similar outside functions. Plans for such screening delineating the size, design, texture, appearance and location must be approved by the Examiner prior to construction.

(i) Minimizing Construction Disturbances. During the continuance of construction, the Owners and their contractors shall maintain the Unit in a clean and uncluttered condition, and construction, both exterior and interior, may not commence before 7:00 a.m. or be continued after 7:00 p.m. Monday through Saturday, and is not permitted on Sunday or any legal holiday. Provided however, Declarant, upon submission of a request by an Owner, may in its discretion allow expanded schedule work based upon the factors existing at that time.

(j) Temporary Structures, Outbuilding and Construction Clean-Up. No structure of temporary character shall be placed upon said Property at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of any improvements on a Unit, subject to a specific area of the Unit being designated by the Examiner for such shelters; it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on said Property after completion of construction and shall, during construction be maintained in clean and uncluttered condition. After completion of construction, it shall be the sole responsibility of the Owner to insure that all temporary structures are removed immediately and that the Lot is cleaned up and immediately placed in good order immediately. The design and color of structures temporarily placed on said Property by a contractor or subcontractor shall be subject to the reasonable aesthetic control of Declarant or the DRB.

(k) Water and Sewage. No structure may be erected on the Property unless suitable provisions have been made for water and the disposal of sewage by each Owner with the Dorchester County Public Works Department, or its successors, and said provisions have been approved by DRB. No private potable water wells or shallow irrigation wells may be drilled or maintained on the Property by anyone other than the Declarant or its assigns. Provided however, that this prohibition is not intended to prevent the Declarant or the DRB from approving heating and air conditioning systems which include a closed loop groundwater well system. No Owner may pump or withdraw any water from any of the ponds, lagoons or other water features in the Community.

(l) Setback Requirements. Setback requirements contained in the Development Agreement may be noted on recorded subdivision plats and may be referenced in the Design Guidelines and will be addressed at the time of submission for review. The proposed plans for construction must comply with all state, federal, and municipal regulatory setback requirements, at a minimum. The Declarant may have the right, in its sole discretion, to establish more stringent setback requirements or to grant variances to the setback requirements if the situation calls for the same. Owners acknowledge that different types of Units may have varying setbacks. Setbacks may also be established by Declarant on the recorded subdivision plats for the Community as well as by separate restrictions contained in future supplements to this Declaration by deed or a specific Unit or Units.

(m) Completion of Landscaping. Substantially all of the landscaping shown in plans submitted to the Examiner must be completed within forty-five (45) days of the date of issuance of the Certificate of Occupancy for the structure from the applicable governing authority, unless due to seasonal conditions, such landscaping cannot reasonably be completed within such time frame. As a condition of approval of proposed plans for all structures, the Construction Deposit referenced in Section 3.9 may be required by the Examiner so as to guarantee payment of the landscape installation based upon the contractor's estimated cost of installation to implement the plan as submitted and approved by the Examiner. The builder's letting of a contract for the installation of the full landscaping plan by the end of the first full winter shall be a condition precedent to the issuance of a Certificate of Compliance per Section 3.8.

(n) Other Buildings. Other than the Dependencies as described in Section 3.10(b), no mobile homes, trailer, tent, boat storage facility, barn or similar out building or structure shall be placed outside the residence on any Residential Unit at any time, either temporarily or permanently without prior approval from Declarant or DRB and such approval shall normally be limited to temporary use of such structures reasonably essential to economical, orderly, and efficient construction during a construction process only.

(o) Height Restrictions. No single family residence or Townhome on any Residential Unit shall exceed a maximum of thirty-five (35') feet or three (3) stories from finished grade, whichever is less. Declarant may establish differing height restrictions for the commercial, civic and multi-family Units in future Supplemental Declaration or with specific restrictions set forth in the deed of such Units.

(p) In-Home Telecommunications. Declarant reserves the right to establish minimum community standards as it relates to in-home structured wiring components for telecommunications and related technological services, such standards to be made a part of the Design Guidelines referenced above. Further, Declarant reserves the right to establish through PCA, a central collection service for mandatory in-home technology services for each residence to be constructed within the project, and that such collection services may be part of the budget and therefore subject to the Base Assessment as referenced below.

Note: As recited above, the restrictions set forth in Section 3.10 are related to the Residential Lots in the Community. Specific restrictions may be imposed by Declarant on the other types of properties within the Community, to wit, multi-family, commercial, retail and civic, by reference in the deed of conveyance and/or a Supplemental Declaration.

Section 3.11 Miscellaneous Restrictions. The following restrictions shall apply to all Units within the Community.

(a) Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or pastured on the Property other than a maximum of three (3) household pets kept on any one Unit. In order to preserve the aesthetic qualities of the Property, to maintain sanitary conditions on the Property, to prevent the spread of worms and infectious diseases on the Property, to maintain a proper respect for other Owners and users of the Property, and to maximize the overall use and enjoyment of the Property, each person who keeps a pet within a residence shall abide by municipal ordinances and rules and regulations established by the Declarant or the PCA from time to time. The breach of any of these ordinances, rules and regulations shall be a noxious and offensive activity constituting a nuisance.

(i) The Declarant or the PCA may: (i) prohibit the keeping of any dog with a prior history of causing bodily injury established through insurance claims records, or through the records of local public safety, law enforcement or other similar regulatory agency;

(ii) establish by rule that dogs of other breeds are potential hazards to the Association and its occupants, and may not be kept upon the Community;

(iii) require that an Owner execute a written indemnification and hold harmless agreement in favor of the PCA and the PCA's management company, in form and content satisfactory to counsel for the Board, prior to bringing the Owner's pet upon the Property; and

If, for any reason whatsoever, the PCA needs to detain, incarcerate, capture, or tranquilize any animal or animals which may roam free, and it is found that said animals are the property of an Owner, then all fees necessary to cover such detainment, incarceration, capture, or tranquilization shall be levied against the Owner of said animal as a Specific Assessment.

Notwithstanding the use of the word, "Owner" hereunder, the terms and provisions hereof shall extend to an Owner's family members, guests, tenants, lessees, and the Owner shall be fully responsible hereunder for the pets thereof on the same basis as the Owner would for its owned pets.

(b) Unsanitary Conditions. It shall be the responsibility of the Owner, its successors and assigns to maintain his or her Unit consistent with the Community-Wide Standards and to prevent the development of any unclean, unsightly or unkempt conditions, including, by way of example, interruption of construction activities for more than thirty (30) days, of buildings or grounds on said Unit which shall tend to substantially decrease the beauty of the Community.

(c) Offensive Activity. No noxious or offensive activity shall be carried on upon said Unit, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the Community. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the other property in the Neighborhood by the Owners thereof. Further, while it is understood that Owners will have garbage and receptacles, such receptacles shall be for domestic garbage only and the Owner shall not be authorized to dispose of any hazardous waste materials on a Unit or within

the Community. The term "hazardous waste materials" shall mean any substance, material, waste, gas or particular matter which is regulated by any local government authority, the State of South Carolina on the United States Government as a "hazardous waste", "hazardous material", "hazardous substance" or restricted "hazardous waste".

(d) Signs. No commercial signs, including "for rent" or "for sale" and other similar signs, shall be erected or maintained (inside or outside a structure) on any Residential Unit by anyone, including, but not limited to, the Owner, a real estate agent, a contractor or subcontractor, except with the written permission of Declarant or the DRB, or except as may be required by legal proceedings. If such permission is granted, Declarant reserves the right to restrict size, color and content of such signs. It is recognized that signage will necessarily be allowed in the commercial and civic sections of the Community, subject to certain guidelines to be established by Declarant, including compliance with the Community-Wide Standards.

(e) Restrictions of Use of Certain Roadways. While the main road network within the Community is intended to be public, i.e., County owned and maintained per the terms of the Development Agreement, there are certain access areas which will be privately owned, e.g., certain alleys in some of the areas of the Residential Units which provide access to individual Residential Units. Subject to the rights of ingress and egress of Owners and guests, Declarant and its successors shall have the power to place any reasonable restrictions upon the use of such private roadways within the Community and leading through lands owned or managed by Declarant to the Unit, including but not limited to restrictions pertaining to the speeds of vehicles, traffic and parking regulations and noise levels of vehicles. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Community shall not make such restrictions unreasonable.

(f) Restrictions on Types of Vehicles/Boats. No camper trailers, recreational vehicles, ATVs, trucks, boats, jet skis, or utility trailers shall be parked or maintained outside the residential structures on the Residential Unit, unless for a short term, temporary basis for, e.g., unloading. By "outside the residential structures" this is intended to mean on the Residential Unit or on the private or public right of way adjacent to a Residential Unit. The term "truck" as used herein is intended to refer to those vehicles of various sizes and designs for transporting goods, moving heavy articles, or hauling quantities of cargo and which are used in a trade or business in which the truck is used because of its commercial capabilities and not merely as a means of transportation and/or which display identification on the exterior of the vehicle to a commercial enterprise. This is not intended to include attractive vehicles driven and maintained primarily as a means of transportation, such as dual purpose vehicles like station wagons, jeeps, "SUV" vehicles, and sport trucks and other pick-up type trucks of three-quarter (3/4) ton or less that do not have exposed signage or logo other than discreet identification approved by the Declarant or DRB and do not have exposed equipment or supplies.

Motorcycles and motorbikes are not prohibited from the Property and may be used by Owners for access to and from the Property, but such vehicles, together with any other vehicles and boats are subject to any rules and regulations that may be adopted by Declarant and/or its successors from time to time.

No Owners will repair or restore any vehicle of any kind upon or within a Residential Unit except (a) within enclosed garages, or (b) emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(g) Landscaping Maintenance. Unless within a designated nature curtain as described in Section 3.10 (d) above, no weeds, underbrush or other unsightly vegetation shall be permitted to grow or remain upon any Residential Unit, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All Units and any improvements placed thereon shall at all times be maintained in a neat and attractive condition and in compliance with the Community-Wide Standards. Landscaping shall be maintained in a neat, attractive and orderly manner, including regular mowing and maintenance of grass, plants, plant beds, trees, turf, proper irrigation and water's edge maintenance. In order to implement effective control, Declarant and/or PCA, its agents and assigns, may take enforcement action pursuant to Section 3.11 (h) infra.

(h) Self Help/Enforcement Action (or Right of Entry). Whenever Declarant and/or PCA, its agents and assigns, is permitted by these Covenants 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 PCA 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 obligation pursuant to Section 8.6 infra. Such costs to be paid within thirty (30) days after receipt by Owner of an invoice from Declarant or the PCA, 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 PCA 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 PCA, 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.

(i) Interval Ownership, Timesharing and Devices to Effect Interval Ownership Prohibited. No time sharing or other forms of interval ownership, including, but not limited to that defined under the Vacation Time Sharing Act, as codified in Title 27, Chapter 32 of the South Carolina Code at the time this Declaration is recorded shall be permitted on the Property.

(j) Rental Restrictions/Leases. The residential portion of the Community is intended by Declarant to be a primary home community and to contain owner-occupied residences. The lease or rental of any residence on a Residential Unit for a period of less than three (3) consecutive months shall be prohibited, excluding rentals or other arrangements to or with members of and Owner's immediate family. The lease or rental of any residence for a period exceeding three (3) consecutive months shall not be considered to be a violation of this Declaration so long as the lease of such residence is undertaken in full compliance with, and subject to, the rules and regulations as may be promulgated and published from time to time by the Association. Because a Dependency is allowed on a Residential Unit pursuant to Section 3.10(b) above, it is conceivable that long term leases of both residences on a Residential Unit may become a reality. Multiple leases of residences on any one Residential Unit is permissible and not in violation of this restriction so long as the lessees are related by blood or marriage or by employment (e.g. a caretaker residing in a Dependency who is the employee of a tenant in the "Main House"). The intention of this restriction is to prohibit the rental of more than one residence on a Residential Unit to unrelated parties. All leases of any residences within the Property shall be in writing and all tenants of residents within the Property shall in all respects be subject to the terms and conditions of this Declaration. The Board may suggest or require a standard lease form or lease addendum for use by Owners. Each Owner shall register the names of the tenant(s) by providing a copy of the executed lease to the Board and/or complete any Board prescribed form then in effect. It is also the intention that such tenants shall have privileges to use the Common Property of the Community.

(k) Subdivision/Consolidation of Property.

(i) Once a Unit has been conveyed by the Declarant to an Owner, the Property shall not be further subdivided nor its boundary lines changed, except with the written consent of Declarant; provided, however, that nothing contained herein shall be construed to prohibit the Declarant the right to re-plate any Unit or Units which are owned by the Declarant into one (1), two (2) or more Units by subdivision, consolidation or reconfiguration, and the Declarant may take such other steps as are reasonably necessary to make such re-platted Unit(s) suitable and fit for use for its originally intended purpose. Such steps may include but are not limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of said re-platted Units.

(ii) In the event of an Owner or Owners owning two (2) or more contiguous Units, said Owner(s) may apply to Declarant for a consolidation of the two (2) or more Units into one (1) or more. At its sole discretion, Declarant may then take such steps as are reasonably necessary to make this consolidation of record at the requesting Owner's cost and expense. At Declarant's sole discretion, upon consolidation of the consolidated Unit may be considered one (1) Unit for all purposes of these Covenants and membership in the PCA; however, for purposes of all Assessments referenced in Article VIII, each Unit which is consolidated into another Unit will continue to be considered two (2) different Units. By way of illustration, if two (2) Residential Units are consolidated into one (1) Residential Unit, the future Assessments shall be based upon two (2) Residential Units; if three (3) such Residential Units are consolidated into two (2) Residential Units, then the Assessment shall be based upon three (3) Residential Units. As part of any such consolidation approval, Declarant may require, in its discretion, that the consolidating Owner assign to Declarant, in a recordable form approved by Declarant, the excess density unit(s) no longer needed by the consolidating Owner.

(l) Drainage and Grading. As drainage and grading is an important factor for the Community, in general, a specific drainage plan must be submitted by an Owner at the time of construction as referenced above in Section 3.2 (a). Each Owner shall be responsible for controlling the natural and manmade water flow from his/her Unit and for complying with the Community-Wide Standard. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Property with excessive water flow from his Unit on to adjacent Units, Common Properties and/or Open Space. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flow from his Unit. Neither PCA nor Declarant bears any responsibility for remedial actions to any Unit.

(m) Destruction and/or Damage to Unit. Each Owner covenants and agrees that in the event of damage to, or destruction of, structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as previously approved by PCA. Alternatively, the Owner shall clean the Unit and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. Additional recorded covenants may establish more stringent standards for rebuilding or reconstructing structures on the Units or for the cleaning and maintaining the Units in the event the structures are not rebuilt or reconstructed.

ARTICLE IV Environmental Controls

Section 4.1 Topography and Vegetation. Topographic and vegetation characteristics of a Unit shall not be altered by removal, reduction, cutting, excavation or any other means without the prior written approval of the Declarant or DRB.

Section 4.2 Certain Controls.

(a) To implement effective and adequate erosion control and protect the beauty of the Property, the Declarant, its successors, assigns (including but not limited to the PCA), and agents may take enforcement action pursuant to Section 3.11 (h) supra, provided, however, that prior to exercising its right to enter upon the property, the Declarant or PCA, as the case may be, shall give the Owner the opportunity to take any corrective action required by giving the Owner notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by such Owner. If the Owner fails to take the corrective action specified within fifteen (15) days after having been notified, the Declarant or PCA, as the case may be, may then exercise its right to enter upon the property in order to take the necessary corrective action and may charge and collect all expenses incurred as set forth under Section 3.11 (h) supra.

(b) To implement effective insect, reptile and woods fire control, the Declarant, its successors, assigns, and agents may take enforcement action pursuant to Section 3.11 (h) supra, provided that such entry shall not be made until such Owner has been notified in writing of the need of such work and unless such Owner fails to perform the work within fifteen (15) days of such notice.

(c) The provisions of this Section 4.2 are designed to promote the health and welfare of the Community and shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any property, to provide garbage or trash removal services, to perform any grading or landscaping work, construct or maintain erosion prevention devices or storm drainage improvements, or to provide water pollution control on any privately owned property. Entrance upon property pursuant to the provisions of this Section 4.2 shall not be deemed a trespass. The rights reserved unto the Declarant in this Section 4.2 shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of this Declaration.

Section 4.3 Environmental Hazards. To secure the natural beauty of the Community, the Declarant, its successors or assigns may promulgate and amend from time to time rules and regulations which shall govern activities which may, in its judgment, be environmentally hazardous, such as the application of fertilizers and pesticides and other chemicals. Failure of any Owner or lessee of property to comply with the requirements of such rules and regulations shall constitute a breach of these Covenants.

Section 4.4 Erosion in Common Properties. The Declarant, its successors and assigns, shall have the right, but shall not be obligated, to protect all Common Properties from erosion, by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as construction and maintenance of siltation basins, or other means deemed expedient or necessary by the Declarant. The right is likewise reserved to the Declarant to take steps necessary, within Common Properties, to provide and insure adequate drainage ways, to cut fire breaks, and to remove diseased, dead or dangerous trees and carry out other similar activities, the cost of which services shall be paid through the Assessments described in Article VIII.

Section 4.5 Wetland Easements. All freshwater wetland areas within and adjacent to the Property, lying within or adjacent to designated Common Property, are important aesthetic and functional resources of the overall Community development. To ensure that these important resources remain available for the enjoyment and benefit of all Owners, while not causing undue hardship to any Owner affected, in addition to a wetland buffer being established on all Units lying adjacent to freshwater wetlands, said buffer depicted on the plat referenced in Exhibit A, the following rights and easements are hereby reserved by Declarant:

(a) A non-exclusive easement for ingress, egress and access to the wetland areas within the Property by Declarant, including the right of Declarant to enter upon the designated areas to construct or maintain any improvements deemed

necessary to facilitate the access to and enjoyment of the wetland areas. This easement shall be in addition to easements depicted on any recorded plat. For the purposes of this Paragraph, the designated easement areas shall extend landward as noted on the subdivision plat or otherwise defined by a recorded instrument along or around the entire perimeter of any wetland area; provided, however, that such reserved easement is not intended to adversely affect the use or enjoyment of an individual Owner's Unit.

(b) An exclusive right and easement (i) to pump water from ponds, and other bodies of water located within the Community for the purpose of irrigating any portions of the lands within the Community, and (ii) to drill, install, locate, maintain, and use wells, pumping stations, water towers, siltation basins and tanks, and related water and sewer treatment facilities and systems within the Common Property, including within any portion of the recreational facilities owned by Declarant. The reservation of this easement does not grant to the public or to any Owner the right to pump water from ponds or other bodies of water with the Community.

(c) An exclusive right and easement across the Property for the purpose of altering drainage and water flow. The exercise of such easement shall not materially diminish the value of, or unreasonably interfere with the use of any Unit without the specific consent of such Owner.

Section 4.6 Standard of Reasonableness. The rights reserved unto the Declarant in this Article IV shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of this Declaration.

ARTICLE V **Special Restrictions Affecting** **Open Space Areas**

Section 5.1 Declarant's Intention for Open Space. Where land planning results in the designation of areas of open space, it is the intent of the Declarant to maintain and enhance (or to convey, subject to open space restrictions, to the PCA) those areas, if any, which the Declarant designates as "Open Space" on plats hereafter filed for record in the local recording office of Dorchester County by the Declarant. Such Open Space may, but need not necessarily be, also designated as Common Property at the time of their conveyance to the PCA. It is the further intent and purpose of these restrictions and covenants to protect the wetlands and to maintain and enhance the conservation of natural and scenic resources, to promote the conservation of soils, wetlands, wildlife, game and migratory birds, enhance the value of abutting and neighboring residential areas adjacent to such Open Space, and to afford and enhance recreational opportunities, preserve historical Units and implement generally the Declarant's master plan for development.

Section 5.2 Conservation Area. As described in the Development Agreement, Declarant is obligated to protect, or cause to be protected, the headwaters of the Ashley River which are in an area within the Additional Property. Declarant to do so either by conservation easement and/or recorded restrictive covenants. There are other portions of the Additional Property which would lend itself to the potential of a conservation area and/or conservation easement. Said conservation areas possess significant ecological and natural resources, water quality protection, open space and scenic value, and historical and cultural values of great importance to Declarant, the PCA and all Owners within the Community, as well as the general public. Declarant reserves the right to grant a conservation easement in favor of an entity which has experience and ability to be a holder of conservation easements, and which entity may be a publicly supported tax exempt non-profit corporation dedicated to the preservation of natural and historical resources. Declarant may also choose to restrict the conservation Areas by a specific set of restrictions and covenants and may do so by a supplement to this Declaration and impose the management and governance of the areas on The Ponds Conservancy ("Conservancy") described in Section 8.12 *infra*.

Section 5.3 Erosion Prevention Activities. The Declarant shall have the right to protect from erosion the land described as Open Space area by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means deemed expedient or necessary by the Declarant. The right is likewise reserved to the Declarant and to take necessary steps to provide and insure adequate drainage ways in Open Space, to cut fire breaks, remove diseased, dead, or dangerous trees and carry out other similar activities.

Section 5.4 Dumping Prohibited. No dumping of trash, garbage, sewage, sawdust or any unsightly or offensive material shall be placed upon such Open Space areas, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as Open Space.

Section 5.5 Consistent Rights to Use Reserved. The Declarant expressly reserves to itself, its successors and assigns, every reasonable use and enjoyment of said Open Space, in a manner not inconsistent with the provisions of this Declaration.

Section 5.6 Corrective Action No Trespass. Where the Declarant is permitted by these Covenants to correct, repair, clean, preserve, clear out or to do any action on the Open Space areas entering such property, taking such action shall not be deemed a breach of these Covenants.

Section 5.7 No General Easement Intended. The granting of this easement does in no way grant to the public or to the owners of any surrounding or adjacent land, the right to enter such Open Space without the express permission of the Declarant. Provided, however, that in the event that Declarant does exercise its rights to create a conservation area administered by the Conservancy or grant a conservation easement to an entity as described in Section 5.2, then in such event, Declarant may specifically grant access to the conservation area to the public, said access to be administered and managed by either the Conservancy or a grantee of the conservation easement.

Section 5.8 No Affirmative Action Required of Declarant. It is expressly understood and agreed that the granting of this easement does in no way place a burden of affirmative action on the Declarant, that the Declarant is not bound to make any of the improvements noted herein, or extend to any Owner any service of any kind, except as such may be undertaken at the expense of the PCA.

Section 5.9 Declarant Rights Assignable. The rights reserved by Declarant in this Article V are assignable to its successors and assigns, including the PCA, the Conservancy, and a potential grantee(s) of a conservation easement for certain conservation areas. All references to the Declarant's rights herein shall mean Declarant's successors and assignees as the context calls for same.

PART THREE PROVISIONS FOR PONDS COMMUNITY ASSOCIATION

ARTICLE VI Ponds Community Association

Section 6.1 Function of the Association. The Ponds Community Association ("PCA") is the entity responsible for management, maintenance, operation, and control of the Common Property of the Community. The PCA also is the primary entity responsible for enforcement of the Covenants. The PCA shall perform its functions in accordance with the Governing Documents, Community-Wide Standards and South Carolina law.

Section 6.2 Membership. Every Owner shall be a Member of the PCA. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.4(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the PCA.

Section 6.3 Weighted Assessments.

(a) Because of the different use classifications of properties contemplated by Declarant within the Community, while every Owner shall be a Member of the PCA as reflected above in Section 6.2, the allocation of Assessments per Article VIII and voting rights per this Article VI shall be weighted based upon the type of Unit. In the event the classification for a particular Unit is not apparent, the determination of Declarant shall be controlling.

Note: It is the Declarant's specific intent with the concept of weighted Assessments as set forth in Section 6.3 to create a fair and equitable sharing of common expenses. For example, the contemplated Village Center is intended to provide services to the residential areas and to serve as a community core area fostering communications and a closer community spirit. For that reason, to a certain extent, all of the Community will be contributing in some way to some of the common areas within the Village Center.

Subject to modification in future Supplemental Declarations, Declarant has set forth in the following Chart C the schedule of weighted Assessments assigned to a Unit:

Chart C
Weighting of Units for Assessments

<u>Use Classification</u>	<u>Weighted Units</u>
Residential (per Unit)	1.00
Multi-Family (per Unit)	1.00
Non-Residential (per Unit) -- prior to issuance of Certificate of Occupancy; unimproved, i.e., building site	1.00
Non-Residential (per Unit) -- after issuance of Certificate of Occupancy, i.e., improved. This would include office, commercial (including restaurants) and Retail Units.	1.00 (Non-Residential Unit) plus .25 for each 1,000 sq. feet of gross floor area*, e.g., a 2,300 square foot Retail Unit would have 1.00 plus .75, or a 1.75 weighted Assessment
Live/Work This would include office/commercial/Retail Units in combination with Residential Units	1.00 (Residential Unit) plus .25 for each 1,000 sq. feet of gross floor area of the office/commercial/Retail Unit*, e.g., a Live/Work Unit with 1,700 square feet of office space would have 1.00 plus .50, or a 1.50 weighted Assessment
Inn/Hotel	1.00 (Inn/Hotel) plus .25 for each 1,000 square feet of gross floor area of commercial or restaurant space*
Civic (exempt)	

*(rounded to the nearest 1,000 sq. ft.)

(b) Additional Definitions Related to Weighted Assessments.

"Certificate of Occupancy" is that Certificate or approval issued by local municipalities as a final condition of occupancy of a Unit for its intended use.

"Gross Floor Area" means the area within an enclosed structure intended for occupancy or other use, and for which an initial Certificate of Occupancy has been issued and which is substantially complete as determined by a licensed engineer or architect. Gross Floor Area shall not include parking lots or parking garages.

"Retail Unit" refers to any Unit which is approved to use primarily for the purposes of the sale of goods or prepared food or beverages to ultimate consumers usually in small quantities "as opposed to wholesale quantities". By way of example, and not of limitation, examples of a Retail Unit would include clothing store, drug store, restaurant, bar, dining room, soda shop, eaterie café or delicatessen which is operated or intended as a for-profit-business enterprise.

"Inn/Hotel" means any commercial establishment within the Community which offers lodging to transients which may have restaurants, meeting rooms, professional service areas and retail shops.

(c) Modification. Declarant reserves the right to modify the above schedule to include any uses currently not contemplated by virtue of the rights reserved to amend the Declaration by a Supplemental Declaration. Declarant shall initially determine a Unit's weighted classification at the time of conveyance or commencement of Assessments based upon the intended use of the Unit in accordance with the Declarant's master plan. Declarant shall provide PCA notice of each Unit's classification upon its inclusion in a Declaration or annexation thereto. For as long as Declarant owns property described on Exhibit "A" or Exhibit "B" to this Declaration, Declarant unilaterally may change a Unit's classification or amend this Section 6.3 schedule to create additional Unit classifications or to change the weighting of Units assigned to any particular classification; provided however, that no such amendment may materially adversely impact any Unit without the written consent of the Owner of such Unit.

(d) Allocation of Assessments. The allocation of Assessments shall be computed by creating a fraction, the numerator of which is the weighted number assigned to a Unit and the denominator of which is the total weighted number assigned to all Units subject to the Assessment. The formula is illustrated as follows:

- (i)
$$\text{Weighted Unit (numerator)} / (\text{divided by}) \text{ Total Weighted Units (denominator)} \times (\text{multiplied by}) \text{ Total Amount of Assessment} = \text{"AA" Allocable Assessment per Unit}$$

For an example of an Assessment calculation, assume that (a) revenue required from Base Assessments pursuant to a fiscal year budget is \$500,000.00; and (b) there are (i) 400 Residential Units; (ii) 50 Multi-Family Units; (iii) 10 Non-Residential Units with 20,000 square feet of gross floor area total; and (iv) 10 Live/Work Units, including 10,000 square feet of gross floor area of Retail Units.

The assigned weighted Assessment shares per Chart C would be: (a) 400 for the 400 Residential Units; (b) 50 for the 50 Multi-Family Units; (c) 10 for the 10 Non-Residential Units plus a factor of .25 for the square footage, or a total of 15; (d) 10 for the 10 Live/Work Units plus a factor of .25 for the square footage, or a total of 12.5, resulting in 477.5 total weighted Assessment share.

Thus, the allocable Assessment per Unit for the year would be \$500,000 divided by the number of total weighted Assessment shares (477.5) or \$1,047 per Unit. Hence, a Residential Unit at 1.0 would pay \$1,047.00; a Live/Work Unit at 1.25 would pay \$1,309.00.

(Note: The Assessment calculation shown is a mathematical example only. It is not an estimate of any budget, the number of Units of different types or the actual Base Assessments that may be applicable at the time.)

(e) Declarant, or PCA as its successor, shall compute the weighting of the Units annually prior to the billing of the annual Base Assessments. Upon annexation of Additional Property to be made a part of this Declaration, Declarant, or PCA, shall recompute the Assessments as needed based upon additional Units and send a notice to each Owner of Assessments due; however no adjustments of Assessments previously levied or refunds of Assessments period shall be made within the fiscal year to reflect any such re-computation.

Section 6.4 Voting.

The PCA shall have two (2) classes of membership, 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 owning a Residential Unit, Multi-Family Unit or unimproved Non-Residential Unit shall have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 6.2. Class "A" Members owning an improved Non-Residential Unit or a Live/Work Unit and/or a Inn/Hotel shall have two (2) equal votes for each such Unit in which they hold the interest required for membership under Section 6.2. No vote shall be exercised for any property which is exempt from Assessment under Section 8.11. All Class "A" votes shall be cast as provided in Section 6.4(c).

Note: Similar to the weighting of Assessments per Section 6.3, because the total anticipated build out of the Community will primarily composed of Residential Units, certain of the Non-Residential Units are provided a slightly weighted vote to create a more balanced system.

Declarant has set forth in the following Chart D the schedule of weighted votes assigned to a Unit.

Chart D
Weighting of Units for Voting

<u>Use Classification</u>	<u>Weighted Units</u>
Residential (per Unit)	1.00
Multi-Family (per Unit)	1.00
Non-Residential (per Unit) -- prior to issuance of Certificate of Occupancy, i.e., unimproved site	1.00
Non-Residential (per Unit) -- upon issuance of Certificate of Occupancy, i.e. improved. This would include office, commercial (including restaurants) and Retail Units.	2.00
Live/Work This would include office/commercial/Retail Units in combination with Residential Units	2.00
Inn/Hotel	2.00
Civic (exempt)	

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint all of the members of the Board of Directors. Additional rights of the Class "B" Member are specified in the relevant sections of these Covenants and other related documents.

The Class "B" membership shall terminate upon the earlier of:

- (i) December 31, 2035; or
- (ii) when, in its discretion, Declarant so determines and declares in a recorded instrument; or
- (iii) when ninety-five (95%) percent of the Units planned for the Community per the Development Agreement, plus any other Units developed by Declarant on the Additional Property, have been conveyed to Class "A" Members.

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.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for 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 PCA, 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.

Section 6.5 Specific Areas of the Community (or "Sections").

(a) Sections. As recited above, the Community will be an integrated Community of various areas and varied uses, including single family residential, both regular lots and townhome lots, multi-family residential, commercial, retail and civic. It is possible that during the growth of the Community and in the orderly progression of development, various neighborhoods or geographic areas of the Community will develop. For purposes of these Covenants, such a geographic area will be known as a "Section" which will be comprised of a group of Units in a distinct geographical area and may have unique characteristics and/or special needs and services from the PCA which are not provided to all Units within the Community. A Section may consist of more than one (1) geographical area which may not necessarily be contiguous. A Section may be comprised of more than one (1) housing type. Sections may have separate associations formed within that Section for a specific project. By way of example, but not limitation, a multi-family condominium project will be formed as a horizontal property regime under South Carolina law and, as such, will have a separate owners association, basically administering for those condominium units. Similarly, there may be a separate association formed for the retail merchants of the Village Center. Many of these specific associations (called "Section Associations") have jurisdiction only over their own Unit but will also be subject to the terms and conditions of these Covenants and for that reason will be considered subordinate associations to PCA. Nothing in this Declaration requires the creation of any Sections or Section Associations.

(b) Designation. The Exhibit "A" to each Supplemental Declaration submitting additional property to this Declaration may assign the submitted property to a specific Section (by name or other identifying designation), which Section may be then existing or newly created. So long as it has the right to subject Additional Property to this Declaration pursuant to Article II, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to re-designate Section boundaries.

(c) Services to Section. Any Section, acting through a Section Association, if any, may request that the PCA provide a higher level of service than which the PCA generally provides to all other Sections or may request that the PCA provide special services for the benefit of Units in such Section. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Section, the PCA shall provide the requested services.

The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Sections receiving the same service), shall be assessed against the Units within such Section and shall be known as a "Section Assessment". PCA's obligation to continue to provide such requested special services is conditioned upon receipt of the funds from the Section Association or Section Owners.

(d) Section Voting. Each Section, through its own governing documents, may, but shall not be required to, enact a procedure whereby a representative or representatives of the Section Association will have the authority to vote, all votes attributable to Units owned by Class "A" Members in these specific Sections, on PCA matters requiring a Membership vote. By way of example, a master deed for a multi-family condominium project within the Community may specifically designate its board of directors as the representative for voting purposes within PCA. The lack of such provision in the Section Association governing documents means that each of the owners of Units within that specific Section shall be entitled to cast their own votes on all PCA matters.

Section 6.6 By-Laws. The By-Laws of the PCA have been drawn and approved by Declarant to govern meetings, duties, etc. of the PCA. Declarant shall cause them to be recorded in the RMC Office for Dorchester County, South Carolina as Exhibit "C" to this Declaration. Recordation is intended to be notice to the PCA and all Members thereof and is for informational purposes only. The By-Laws stand on their own, are not to be considered part of these Covenants, and may be amended as provided therein.

Section 6.7 Powers and Duties of Declarant/PCA. After activation of the PCA by Declarant, Declarant shall possess all powers and rights described herein until specifically assigned to PCA. In general, Declarant may assign, in whole or in part, any of its reserved rights set forth in these Covenants to the PCA by a specific document which shall be recorded in the RMC Office for Dorchester County, South Carolina.

ARTICLE VII**Duties, Obligations, Authority and Services of The Ponds Community Association ("PCA")**

Section 7.1 PCA. The PCA, its successors and assigns, shall be considered: (a) an assignee of Declarant; (b) the authorized and ratified agent of the Owners with respect to the functions specified herein; (c) a third party beneficiary under these Covenants; and (d) as an Owner of Property subject to these Covenants. The PCA and its successors and assigns shall have the standing and authority at law or in equity to carry out and enforce these Covenants.

Section 7.2 Limitation on Duties and Obligations. The PCA shall strive to carry out and put into effect the functions and services specified or reasonably implied in this Declaration; however, the functions and services to be carried out or offered by the PCA at any particular time shall be determined by the Board with due consideration given to the amount of reserves and revenues available to the PCA, and the relative demands upon the resources which the PCA can utilize to maintain Common Property and to increase the use and enjoyment of the Property as a whole. The PCA shall not be obligated to incur debt or deficits of expenditures over revenues in order to carry out its monetary function.

The PCA and its Directors and Officers shall not be liable to any Owner, their lessees or guests, for any damage or injury which results from any rule or regulation promulgated pursuant to these Covenants in good faith and reasonable care.

Section 7.3 Powers of the PCA. The PCA shall have and may exercise any right or privilege given to it expressly in these Covenants or, except to the extent limited by the terms and provisions of these Covenants, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under these Covenants, including the right to engage necessary labor and acquire use of, or purchase necessary property, equipment or facilities; to accept and administer easements across private property; employ personnel necessary to manage the affairs of the PCA; obtain and pay for legal, accounting and other professional services as may be necessary or desirable; and to perform any function by, through, or under contractual arrangements, licenses or other arrangements with any governmental or private entity as may be necessary or desirable.

Section 7.4 Ownership and Maintenance of Common Property. The PCA shall be authorized to own and maintain Common Property, equipment, furnishings, and improvements devoted to the following uses:

- (a) for roads, alleys or parkways, if any, provided that such roads are not transferred to a municipal authority, and landscaped or natural areas along said roads or parkways throughout the Property;
- (b) for sidewalks, walking paths or trails (not in road rights of way), meadows, archeological sites, conservation areas, playing fields or recreational areas, Open Space, and bicycle paths, if any, throughout the Property;
- (c) for providing any of the services which the PCA is authorized to offer hereunder;
- (d) for insect and forest fire control within the Property;
- (e) for drainage facilities serving the Property;
- (f) for management of any Community wetlands and conservation areas conveyed to PCA or turned over to PCA for management assistance in accordance with all agreements affecting same; and
- (g) for recreational and/or common facilities within the Community for the common use of all, such as the Community parks and fields, the paths, bridges, pastures, creeks, Community pool(s) and recreational areas.

The PCA may maintain other property which it does not own, including, without limitation, property dedicated to the public if the Board determines that such maintenance is necessary as desirable to maintain the Community Standards.

Section 7.5 Authorized Services. The PCA shall be authorized, but not required, to provide the following services:

- (a) cleanup and maintenance of all roads, roadways, parkways, and other easement areas to the extent that it is necessary or desirable in the judgment of the Board to supplement the service provided by the state and local government, if applicable, and cleanup and maintenance of other Common Property within the Property and also all public properties which are

located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;

- (b) landscaping of roads, alleys, and parkways, (including providing supplementary landscaping to those public roads that have been conveyed to a municipal authority), sidewalks and walking paths and any other Common Property;
- (c) lighting of roads, sidewalks and walking paths throughout the Property;
- (d) security functions, including but not limited to maintenance of electronic and other security alarm devices and control centers for the protection of persons and property within the Property;
- (e) insect and pest control to the extent that it is necessary or desirable in the judgment of the Board;
- (f) the services necessary or desirable in the judgment of the Board to carry out the PCA's obligations and business under the terms of this document, including those services which may be applicable to specific Sections and for which there may be Specific Assessments levied;
- (g) to take any and all actions necessary to enforce all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the PCA in any covenants or restrictions applicable to the Property;
- (h) to administer the DRB in the event that the PCA is designated by the Declarant as the agent of the Declarant for such purpose;
- (i) to construct improvements on Common Property for use for any of the purposes or as may be required to provide the services as authorized in this Article;
- (j) to provide administrative services including but not limited to: legal, accounting, financial, and communication services informing Members of activities, and notice of meetings, referendums, etc., incident to the above-listed services;
- (k) to provide the necessary support and administrative services relating to the commercial/retail areas of the Community, including marketing, advertising, transportation, coordination of special events, festivals where the primary emphasis is on art, music, performing arts, dance, sports, civic affairs;
- (l) to provide and coordinate communication by and among the various elements of the Community comprised of Owners of Residential Units, Non-Residential Units, Multi-Family Units, Commercial Units, and Civic Units the intention being that the Community being a blend of all such uses with the desire and the intent of Declarant being that harmonious interrelationship between all seduces is of pivotal importance;
- (m) to provide directly, or to coordinate the provisions of, services to the Owners which relate to the quality of life within the Community and which may include, by way of example, services for Owners relating to shopping, cultural events, health care, etc., and transportation for such services, the intention here being that the PCA's authorized services are intended to be adaptable and expandable to meet the needs of the Community in a rapidly changing world;
- (n) to update, revise, amend and adapt the Design Guidelines referenced herein for the various different uses of Units within the Community; and
- (o) to adopt, modify, update and amend Rules and Regulations regarding implementation of the restrictions and conditions set forth in this Declaration.

Section 7.6 Mortgage and Pledge. The Board shall have the power and authority to borrow money for use by the PCA and to mortgage the property of the PCA and to pledge the revenues of the PCA as security for such loans made to the PCA, which loans shall be used by the PCA in performing its authorized functions. Such borrowing may include loans from Declarant as referenced in Section 8.9 (c). Notwithstanding anything in this Declaration to the contrary, the PCA shall not be allowed to reduce the limits of the Base Assessment at any time there is outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the PCA.

Section 7.7 Information. It shall be the responsibility of the PCA to make available to Owners and mortgage lenders making loans to Owners, and to holders, insurers or guarantors of any first mortgage on a Unit within the Property, current copies of the Declaration, By-Laws, other rules and regulations relating to the Property, and the books, records and financial statements of the PCA. "Available" shall mean available for inspection, upon request, during normal working hours or under other reasonable circumstances.

Section 7.8 Insurance Requirements. The PCA shall at all times maintain in full force and effect casualty, hazard, flood (if applicable), liability insurance and fidelity bond coverage as hereinafter specified:

(a) **Hazard Insurance.** The hazard coverage required hereunder shall protect at least against loss or damage by fire, wind or all other hazards that are normally covered by the standard extended coverage endorsement and all other perils customarily covered for similar structures, including those covered by the standard "all risk" endorsement, and shall likewise include, but shall not necessarily be limited to, the following coverage:

(i) **Required Coverage.** The PCA shall maintain a policy of property insurance, with the premiums being paid as a common expense. The policy must cover all of the Common Property, except for those that are normally excluded from coverage, such as land, foundation, excavation, etc. Fixtures and building service equipment that are considered part of the Common Property, as well as personal property and supplies of the PCA, shall be covered. A reasonable deductible shall be determined by the Board each year.

(ii) **Amount of Insurance.** Insurance should cover the replacement cost of the insured facilities. Coverage does not need to include land, foundations, excavation or other items that are usually excluded from insurance coverage.

(iii) **Special Endorsements.** The insurance coverage herein required shall include Agreed Amount, Replacement Cost and Inflation Guard Endorsements when they can be reasonably obtained. Construction code endorsements such as Demolition Costs Endorsements, Contingent Liability from Operation of Building Laws Endorsements and Increased Cost of Construction Endorsements shall be required when reasonably obtainable.

(b) **Flood Insurance.** If any part of the Community is in a flood hazard zone (as defined by the Federal Emergency Management Agency), the PCA shall maintain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any buildings on Common Property and any other real or personal property of the PCA. A reasonable deductible shall be determined by the Board each year. The amount of insurance should be at least equal to the replacement cost of all buildings and other insurable property located in the flood hazard area or, the maximum coverage available for the property under the National Flood Insurance Program.

(c) **Liability Insurance.** The PCA shall maintain a comprehensive general liability insurance policy covering all Common Areas, public ways and any other areas comprising the Common Property which are under its supervision. The policy shall provide coverage of at least Two Million Dollars (\$2,000,000) for bodily injury and property damage for a single occurrence. An umbrella liability policy with coverage of at least Five Million Dollars (\$5,000,000) shall also be maintained by the PCA. The liability insurance should provide coverage for the following:

(i) bodily injury and property damage that results from the operation, maintenance or use of the Common Property, and any facilities thereon; and

(ii) any legal liability that results from lawsuits related to employment contracts in which the PCA is a party.

The PCA's liability policy shall provide for at least ten (10) days written notice to the PCA before the insurer can cancel or substantially modify the policy.

(d) **Fidelity Bonds.** The PCA shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the PCA, whether or not that person receives compensation for their services. Any management agent retained by the PCA that handles funds for the PCA shall also be covered by its own fidelity bond. The fidelity bond shall cover the maximum funds that will be in the custody of the PCA or its management agent at any time while the bond is in force. Additionally, the fidelity bond coverage must at least equal the sum of three (3) months' Assessments of Units in the Property, plus the PCA's reserve funds.

Except for fidelity bonds that a management agent obtains for its personnel, all other bonds shall name the PCA as an obligee and shall have their premiums paid as a common expense by the PCA. The bonds must include a provision that calls for ten (10) days written notice to the PCA before the bond can be cancelled or substantially modified for any reason.

(e) Directors/Officers Coverage. The PCA shall maintain directors and officers liability insurance in amounts approved by the Board on an annual basis.

(f) Additional Insurance. The PCA shall maintain such additional insurance as the Board, in exercise of its business judgment, deems advisable.

(g) Annual Review. The PCA shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in Dorchester County, South Carolina. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner insured.

(h) Insurance Market. It is recognized that the insurance market can be subject to fluctuations and certain coverage limitations from time to time and, accordingly, it is Declarant's intent to provide as much discretion as possible to the Board relating to the insurance requirements set forth herein.

(i) Restoration of Damage Procedures. In the event of damage to or destruction of Common Property or other property which the PCA is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Property shall be repaired or reconstructed unless Owners representing at least 75% of the total votes attributable to Units entitled to use and enjoy the damaged portion of the Common Property and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the PCA within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the PCA in a neat and attractive, landscaped condition consistent with the Community-Standards.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the PCA for the benefit of the Owners or the Owners of Units within the insured Section, as appropriate, and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners for the premiums for the applicable insurance coverage under Section 7.8.

Section 7.9 Indemnification. The PCA shall indemnify every officer and director against any and all expenses, including attorneys' fees and costs, reasonably incurred by or imposed upon such officer or director in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer or director, whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer or director in the performance of his or her duties, except for their own individual willful misfeasance or malfeasance. 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 PCA (except to the extent that such officers or directors may also be members of the PCA), and the PCA shall indemnify and forever hold each such officer and director 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, or former officer or director, may be, entitled. The PCA shall, as a Common Expense, maintain, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in this Article VII.

Section 7.10 Implied Rights: Board Authority. The PCA may exercise any right or privilege given to it expressly by these Covenants or related documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the PCA may be exercised by the Board without a vote of the membership except where applicable law or the applicable documents specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the PCA in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Property, enforcement of the Covenants or applicable and related documents, or any other civil claim or action. However, the Covenants shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the PCA or its Members.

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

Section 7.11 Security. As referenced above, PCA shall be authorized to provide certain security functions. It is recognized, however, that the Community is not intended to be gated and that the road system throughout the Community, for the most part, will be public. The PCA may decide, from time to time, to supplement any municipal police and/or security services with additional supplementary services. By doing so, PCA may, but shall not be obligated to, maintain or support certain activities within the Property design to make the Property safer than it otherwise might be. Neither Declarant, PCA or any successors or assigns, shall in any way be considered insurers or guarantors of security within the Community nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranties are made that any measures taken, including any mechanism or system for limiting access to the Property cannot be compromised or circumvented, nor that any such security measures undertaken will in all cases prevent loss or provide the protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its guests, tenants, and all occupants of its Unit that PCA, its Board of Directors, the Declarant and any of their successors and assigns, are not insurers, and that each person using the Property assumes all risk of personal injury and loss or damage to property, including Units and contents of residences or other improvements on Residential Units or other Units resulting from acts of third parties.

Section 7.12 Administration of Changes in Ownership.

(a) The Community will be a dynamic and constantly evolving community and as part of same, there will be transfers of ownership of Units. It is the responsibility of any Owner desiring to sell or otherwise transfer title to his or her Unit to give PCA at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as PCA may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the transferor, including prospective assessment obligations, until the date upon which such notice is received by PCA, notwithstanding the transfer of title. PCA may establish a procedure, assess an administrative charge per Section 8.4 below, and prescribe certain forms, to be utilized by the transferring Owner to provide the notice which would set forth any information as the Board may reasonably require.

(b) Upon receipt of notice from the transferring Owner, or upon request from the prospective purchaser, the PCA shall deliver to the prospective purchaser or transferee a set of the Governing Documents and any additional explanatory information about the Community that is deemed appropriate. The materials provided by the PCA shall include the name and number of a contact person who can assist the prospective purchaser with questions he or she may have about the Governing Documents or the PCA. The PCA shall deliver such documentation to the prospective purchaser at the address provided in the notice within ten (10) days of the receipt of the Owner's notice or purchaser's request.

(c) In addition, as the Community matures and transfers are prevalent, the Board may implement, in its discretion, additional procedures and requirements such as the following:

(i) With the document referenced in subparagraph 7.12 (b), the PCA also shall deliver an Acknowledgment and Release form that must be executed by the Unit purchaser as a part of the closing process. The Acknowledgment and Release shall include an express acknowledgment by the purchaser of receipt of copies of the Governing Documents and a statement of account from the PCA applicable to the Unit being conveyed. The prospective purchaser shall execute the Acknowledgment and Release, which shall be recorded. The recording of the Acknowledgment and Release confirms the new Owner's knowledge and acceptance of all of the provisions of the Governing Documents.

BK 6035PG096

ARTICLE VIII
PCA Finances

Note: The primary funding sources available to the PCA include: (a) Base Assessments, including Section Assessments; (b) Special Assessments; (c) Specific Assessments; (d) Transfer/Administrative Fees; (e) Working Capital Contributions; and (f) Declarant Subsidies or loans (if any), all of which are described in this Article VIII and may be generically and collectively referred to as "Assessments".

Section 8.1 **Authorized Association Expenses.** Pursuant to Article VIII, the PCA is authorized to levy Assessments for expenses which it incurs or expects to incur in performing its responsibilities and exercising its rights and power under this Declaration, the other Governing Documents, and applicable law, specifically including, but not limited to:

- (a) expenses of maintaining, repairing, replacing, operating and insuring the Common Property, including amounts due to third parties who perform such tasks on behalf of the PCA;
- (b) expenses arising out of the PCA's indemnification obligations under Section 7.9;
- (c) expenses arising out of its exercise of architectural control under Article III;
- (d) expenses of managing the PCA, including compensation of management personnel, maintaining books and records, handling PCA funds, providing financial reports, and corresponding with Owners, postage and copying expenses, and the cost of office supplies and equipment necessary or desirable to perform its responsibilities;
- (e) legal, accounting and other professional fees; and
- (f) such other expenses as the Board deems necessary or desirable to keep the Community in good, clean and attractive condition, including expenses incurred in bringing any Unit into compliance with this Declaration.

Section 8.2 **Budget Process; Right to Disapprove; Reserves.**

(a) At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments levied against the Units, and the amount to be generated through the levy of the various Assessments against the Units, as authorized in this Article VIII.

(b) The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least seventy five (75%) percent of the total Class "A" votes in the PCA and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within ten (10) days after delivery of the budget and notice of any Assessment.

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

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

(e) The Board shall prepare and review at least annually a reserve budget for the Common Property. The reserve budget is intended to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost, such information to be obtained from PCA's management agent and/or consultants as well as from reserve studies undertaken by the Board from time to time. Besides such replaceable assets, reserves may be established for

other purposes such as, by way of example only, and not by limitation, funding for unusual losses, insurance deductibles, post disaster and emergency needs, etc. The Board shall include in the Common Expense budget adopted pursuant to this Section 8.2, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect to both amount and timing by annual contributions over the budget period.

Section 8.3 Base Assessment. The PCA is authorized to levy Base Assessments equally against all Units, subject to the weighted allocation provisions set forth in Section 6.3 above, to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any Assessment income expected to be generated from any additional Units reasonably anticipated to become subject to Assessment during the fiscal year. The Base Assessment per Unit for calendar year 2007 is \$700.00.

Section 8.4 Administrative/Transfer Fee.

(a) **Authority.** The Board shall have the authority, on behalf of the PCA, to establish and collect a transfer/administrative fee from the transferring Owner upon each transfer of title to a Unit in the Community, which fee shall be payable to the PCA at the closing of the transfer and shall be treated just as an Assessment under this Article VIII ("Transfer Fee").

(b) **Fee Limit.** The Board shall have the sole discretion to determine the amount and method of determining any such Transfer Fee. Initially such fee shall be one hundred (\$100.00) dollars which amount is subject to reasonable increases in future years as adopted by the Board. The purpose of the fee is to address the administrative costs of PCA in the resales process and, therefore, increases may be measured by such factors as the cost of living index, employee compensation, overhead expenses, and the like.

Section 8.5 Special Assessments. In addition to other authorized Assessments, there are two types of Special Assessments, Emergency and Non-Emergency for, by way of example and not limitation, the following reasons:

(a) **Emergency.** The Board shall have the power to levy emergency Special Assessments to supplement the Base Assessment for purposes of cleaning up debris and trees, repair and replacement of infrastructure, and otherwise recovering from an extraordinary wind, rain, flooding or hail damage resulting from a natural disaster, or Act of God, including, but not necessarily limited to, a earthquake, hurricane, tropical storm or cyclone (hereinafter collectively referred to as "natural disaster"). This power is granted to the Board to be exercised in emergency type situations when funds are needed to cover unbudgeted expenses arising out of such a natural disaster. The inclusion of the ability of the Board to levy Special Assessments for emergency purposes is not to be construed to prevent the Board from making a part of its regular budget, and accordingly of the Base Assessment, a reserve amount for emergency purposes.

(b) **Non-Emergency.** The PCA shall have the power to levy a non-emergency Special Assessment, but, except as otherwise specifically provided in this Declaration, any non-emergency Special Assessments shall require an affirmative vote of Owners representing more than fifty (50%) percent of the total votes allocated to Units present in person or by proxy at a regular or special meeting of the Owners, which the notice of same including reference to the vote on this Special Assessment and the affirmative vote, or written consent, of the Class "B" Member, if such exists.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 8.6 Specific Assessments. The PCA shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any special services which may be offered by the PCA. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred pursuant to Section 6.5 above regarding the potential of specific additional services to certain Sections within the Community. A Section Assessment shall be considered a supplementary Base Assessment allocated to only a specific Section(s).

(c) to cover costs incurred in bringing the Unit into compliance with the Governing Documents (e.g., DRB violation per Article III) and Community-Wide Standards, or costs incurred as a consequence of the conduct of the Owner or

occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection.

(d) to cover costs incurred in bringing a specific area within a Section into compliance with the Governing Documents and Community-Wide Standards provided that the Board gives prior written notice to the Owners of the Units in such Section, or portion of a Section, and the opportunity for such Owners to be heard before levying any such Specific Assessment.

(e) to cover costs incurred, or expected to be incurred, by PCA to set up, clean up, provide additional security, utilities or other services in connection with any festival or other special events sponsored by the Owners or tenants of any Unit or group of Units, upon the Board's determination, in the exercise of its business judgment, that such services are necessary or appropriate.

Section 8.7 Working Capital Assessment. The PCA shall have the power to levy a Working Capital Assessment equal to one-sixth (1/6) of the Base Assessment, said Working Capital Assessment to be collected from the purchaser at each closing of a Unit within the Community. The funds collected from the Working Capital Assessment shall be maintained for the use and benefit of the PCA:

(a) **Working Capital Assessment.** The Board shall have the power on behalf of the PCA to establish and collect a Working Capital Assessment from the purchaser upon each transfer of title to a Unit in the Community, which Working Capital Assessment shall be payable to the PCA at the closing of the transfer and shall be treated just as an Assessment under this Article VIII ("Working Capital Assessment").

(b) **Working Capital Assessment Limit.** The Board shall have the sole discretion to determine the amount and method of determining any such Working Capital Assessment, but in any event, it shall be no greater than one sixth (1/6) of the Base Assessment.

The funds collected from the Working Capital Assessment shall be maintained for the use and benefit of the PCA.

Section 8.8 Authority to Assess Owners; Time of Payment. Declarant hereby establishes and the PCA is hereby authorized to levy Assessments as provided for in this Article and elsewhere in these Covenants and related Governing Documents. The obligation to pay Assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies Assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of Assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of the second month of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his or her Unit, the Board may require the outstanding balance on all Assessments to be paid in full immediately.

Section 8.9 Obligation for Assessments.

(a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Community, is deemed to covenant and agree to pay all Assessments authorized herein. All Assessments, together with interest (computed from its due date at a rate of twelve (12%) percent per annum or such higher rate as the Board may establish, subject to the limitations of South Carolina law), late charges as determined by Board resolution, costs, and reasonable attorney's fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance.

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

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

Upon written request, the PCA shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an PCA officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The PCA may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Notwithstanding the foregoing, Declarant shall have the ability to waive some or all of the Assessments for a period of time for any Approved Builders participating in an approved building program within the Community.

(b) Declarant's Option to Fund Budget Deficits. For as long as Declarant is a Class "B" Member, Declarant may satisfy its obligation for Assessments on Units which it owns either by paying such Assessments in the same manner as any other Owner or by paying the difference between the amount of Assessments levied on all other Units subject to Assessment and the lesser of (i) the amount of actual expenditures by the PCA during the fiscal year and (ii) the total budgeted amount. Unless Declarant otherwise notifies the Board in writing at least thirty (30) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Membership, Declarant shall pay Assessments on its unsold Units in the same manner as any other Owner.

(c) Subsidies or Loans by Declarant. Declarant may, but shall not be obligated to, fund all or part of the deficits of the PCA for any fiscal year by payment of a subsidy which may be either a contribution, an advance against future Assessments due from Declarant, or a loan, as determined by Declarant. If a loan, it shall be appropriately documented by a promissory note and shall provide for customary market rate repayment terms. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the PCA and Declarant. An example of when a loan might be made is in an emergency situation where funds are not readily available to the PCA so that on an interim basis, until a Special Assessment can be levied, the PCA and Declarant could agree on such an interim loan arrangement.

Section 8.10 Lien for Assessments. Subject to the limitations of South Carolina law, the PCA shall have a lien against each Unit to secure payment of delinquent Assessments, as well as interest, late charges and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under South Carolina law.

Each Owner personally obligated to pay delinquent Assessments shall also be obligated to pay PCA's cost of collection, including attorney fees and administrative fees incurred, regardless of whether PCA resorts to litigation.

The PCA may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the PCA following foreclosure: (a) no right to vote shall be exercised on its behalf; and (b) no Assessment shall be levied on it. The PCA may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the Assessment lien or relieve such Unit from the lien for any subsequent Assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the Mortgage shall extinguish the lien as to any installments of such Assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for Assessments on such Unit due prior to such acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to Assessment under Section 8.9, including such acquirer, its successors and assigns.

Section 8.11 Exempt Property. The following property shall be exempt from payment of the Assessments referenced in Section 8.2 through 8.7:

- (a) All Common Property and such portions of the property owned by Declarant as are included in the definition of Common Property referenced hereinabove;
- (b) any property dedicated to and accepted by any governmental authority or public utility;
- (c) all Units owned by Declarant, subject to the provisions of Section 8.9(b); and
- (d) all Units designated as "civic" Units.

In addition, Declarant and/or PCA shall have the right, but not the obligation, to grant exceptions to certain Owners qualifying for tax exempt status under Section 501 (c) (3) of the Internal Revenue Code so long as such Owners own Units subject to this Declaration for the purposes listed in Section 501 (c) (3).

Section 8.12 Community Enhancement Fee.

(a) **Authority.** The Declarant reserves the right to create a not-for-profit corporation to be known as The Ponds Conservancy, or other similar name, (the "Conservancy") under the laws of South Carolina to coordinate and administer various programs, projects, services, and activities which, in its judgment, provide a benefit to the residents of the Community. The Conservancy is intended to be a stand-alone entity, separate and apart from PCA, and will be subject to its own governance documents.

Upon creation of the Conservancy for such purposes, the Conservancy shall be authorized to charge and collect a Community Enhancement Fee upon each transfer of title to a Unit. The fee shall be charged to the purchaser of the Unit and shall be payable to the Conservancy at the closing of the transfer. The PCA shall cooperate with the Conservancy in the collection of the Community Enhancement Fee by, among other things, notifying the Conservancy, or its designee, of any pending transfer.

(b) **Fee Limit.** The Conservancy shall have the sole discretion to determine the amount of and method of calculating the Community Enhancement Fee subject to the provisions of this paragraph. The fee may be based upon a sliding scale that varies in accordance with the Gross Selling Price of the Unit or any other factor the Conservancy deems appropriate. However, the Community Enhancement Fee may not exceed one (1.0%) percent of the Unit's Gross Selling Price and will not be less than one eighth (1/8) of one (1.0%) percent.

(c) **Purpose.** The Ponds Community Enhancement Fees shall be placed in a segregated account and used to provide funding for activities and such other purposes as the Conservancy deems beneficial to the general good and welfare of the Community. By way of example and not limitation, Community Enhancement Fees might be used for the following:

- (i) programs and activities which enhance the welfare, benefit and lifestyle of residents within and outside the Community;
- (ii) the preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas and sponsorship of educational programs and activities that contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding the Community;
- (iii) programs, services, and activities which serve to promote a sense of community with The Ponds, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, programs and activities in conjunction with certain of the Civic Units within the Community, and recycling programs; and
- (iv) social services, educational programs, community outreach programs, and other charitable causes.

(d) **Lien for Fee.** The obligation to pay such Community Enhancement Fee shall be the Owner's personal obligation. In addition, subject to the limitations of South Carolina law, the Conservancy shall have a lien against each Unit to secure payment of such Community Enhancement Fee, as well as interest (in the amount of twelve (12%) percent per annum) and

any costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (i) the PCA's liens under the Declaration; (ii) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (iii) the lien or charge of any recorded first mortgage (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value. The Conservancy may enforce its lien and the obligor's personal obligation by suit, judgment, and judicial or non-judicial foreclosure in the same manner as the PCA may enforce its lien and the obligation to pay Assessments under this Article.

Section 8.13 **Exempt Transfers.** Notwithstanding the provisions of Section 8.12 above, no Community Enhancement Fee shall be levied against the Declarant or upon transfer of title to a Unit:

- (a) by a co-owner to any Person who was a co-owner immediately prior to such transfer;
- (b) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (c) to an entity wholly owned by the grantor or to a family trust, partnership, corporation or limited liability company created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due;
- (d) to an institutional lender pursuant to a mortgage or upon foreclosure of a mortgage; or
- (e) under circumstances which the Conservancy, in their discretion, deem to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes).

ARTICLE IX **Common Property**

Section 9.1 **Members' Easements of Enjoyment of Common Property.** Subject to the provisions of these Covenants and the rules and regulations of the PCA, every Member shall have a right and easement of enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with title to every Unit or development parcel within the Property.

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

Section 9.2 **Title to Common Property.** Declarant reserves the right to transfer title to Common Property, at its sole discretion, unto the PCA or, in case of the property referenced in Section 5.2, unto the Conservancy or another entity. Upon transfer of title of the Common Property to the PCA, the PCA shall have the sole responsibility of maintenance, repair, and governing of the Common Property. Prior to such transfer, the PCA and its Members shall be responsible for the maintenance and upkeep of all areas which are designated for common use or enjoyment by Members, notwithstanding the fact that title has not yet been conveyed to the PCA.

Section 9.3 **Extent of Members' Easements.** The right and easements of enjoyment created hereby shall be subject to the following:

- (a) These Covenants and any other applicable recorded restrictions or covenants;
- (b) Any restrictions or limitations contained to any deed conveying such property to the PCA;
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Property, including rules limiting the number of guests who may use the Common Property;
 - (ii) impose reasonable membership requirements for the use of any recreational facility situation upon the Common Area;

- (iii) permit use of any recreational facility situated on the Common Property by guests of Owners;
- (iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- (d) The right of the PCA to take such steps as are reasonably necessary to protect the Common Property against foreclosure;
- (e) The right of the PCA, as provided in its By-Laws, to suspend the enjoyment of rights of any Member for any period for which any Assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published Rules and Regulations, it being understood that a suspension for either non-payment of any Assessment or a breach of the rules and regulations of the PCA shall not constitute a waiver or discharge of the Members' obligation to pay the Assessments;
- (f) The right of Declarant to dedicate or transfer to any public or private utility, fee title to or utility easements on or to any part of the Common Property;
- (g) The rights of certain Owners to the exclusive use of those portions of the Common Property designated "Limited Common Areas," as described in Article XII.
- (h) The right of the PCA to give or sell all or any part of the Common Property, including a leasehold interest, to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such shall be authorized by the vote of three-fourths (3/4) of the Membership at a duly called meeting and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. A true copy of such Resolution together with a certificate of the vote taken thereon shall be made and acknowledged by the president or vice president and secretary or assistant secretary of the PCA and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the Members.
- (i) The right of Declarant to dedicate or transfer to any public or private entity fee title to, or conservation easements on, certain conservation areas which may also be considered common property.

Section 9.4 Use of Common Property; Liability of PCA and Declarant. Neither the PCA, its directors and officers, Declarant, nor its members shall be liable to any Owner, their lessees and/or guests for any damage or injury which results from the use of the Property or any rule or regulation promulgated pursuant to these Covenants or the By-Laws. The Common Property is for the exclusive use of the Members of the PCA and their guests. The PCA, by its Board of Directors, may make such rules and regulations as may be deemed necessary in the future to regulate the use of the Common Property, which rules and regulations shall be binding upon all Members, their guests and invitees. Although the PCA, and, initially, Declarant, will be responsible for the general upkeep and maintenance of the Common Property as provided herein, neither the PCA nor Declarant shall be liable for any accident or injury thereupon which may be caused by Acts of God, negligence of parties not employed by the PCA or Declarant, or careless or negligent activities of Members or their guests. All parties acquiring an interest in any portion of the Property hereby agree to hold the PCA and Declarant harmless from any such accident or injury. All Members and their guests agree and acknowledge that any use of the Common Property shall be at their own risk, without recourse to the PCA or Declarant. Any damage to Common Property caused by an Owner or his family or guests shall be the responsibility of the Owner, and Declarant and/or the PCA shall have the right to collect for such damages. Nothing shall be done or kept on the Common Property which will increase the rate of insurance on the Common Property without the prior consent of the PCA or Declarant. No Owner shall permit anything to be done or kept on the Common Property which might result in the cancellation of insurance on any part of the Common Property, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation.

ARTICLE X

Rules and Regulations

Section 10.1 Establishment of Rules and Regulations. Subject to the provisions hereof, the Board of the PCA may establish reasonable rules and regulations concerning the use of easement areas, Open Space and the Common Property and facilities located thereon ("Rules and Regulations"). Copies of such Rules and Regulations and amendments thereto shall be

furnished by the PCA 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 Rules or Regulations are specifically overruled, cancelled or modified by the Board or in a regular or special meeting of the PCA by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the PCA. The Rules and Regulations are intended to stand on their own and are not to be considered part of these Covenants, and may be amended as stated above and therein.

Section 10.2 Authority and Enforcement. Subject to the provisions of Section 10.3 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board shall have the power to:

- (a) impose reasonable monetary fines on the Owner guilty of such violation which shall also constitute a Specific Assessment, and therefore an equitable charge and a continuing lien upon the properties of such Owner;
- (b) suspend an Owner's right to vote in the PCA; and
- (c) suspend an Owner's right to use any Common Property other than the right of ingress and egress and the Board of Directors of the PCA shall have the power to impose all or any combination of these sanctions.
- (d) suspend some or all of the specific services to the Owner which are intended to be paid for by the Assessments.

An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, tenants or invitees, or by his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed sixty (60) days.

Section 10.3 Procedure. The Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner for violations of the Declaration, the By-Laws, or any rules and regulations of the PCA, unless and until the following notice and hearing procedure set forth in this Section 10.3 is followed: [Note: This notice and hearing procedure shall not be required with respect to (a) the failure to pay Assessments or fees in a timely manner, (b) a violation that has been determined to exist by a court, a regulatory body, or binding arbitration, (c) a violation of the Design Guidelines or Design Review procedures set forth in Section 3.4 above, or (d) a violation that has been admitted by the alleged violator. Notwithstanding, the Board, in its sole discretion, may give such notice and permit such hearing in such excluded situations.]

- (a) written demand to cease and desist from an alleged violation shall be served upon the person responsible for such violation specifying:
 - (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 PCA may result in the imposition of sanctions after notice and hearing.
- (b) 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 may serve such person with written notice of a hearing to be held by the Board 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) The hearing shall be held by the Board 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.

(d) The alleged violator shall have the right to appeal any adverse decision in accordance with the appeal process as set forth in the Bylaws, if any, and amended from time to time.

PART FOUR PROPERTY RIGHTS WITHIN THE PONDS

ARTICLE XI Easements

Section 11.1 Easements in Common on Common Property. Declarant grants to each Owner a non-exclusive right and easement of use, access and enjoyment in and to the Common Property subject to: (a) the Governing Documents and any other applicable covenants; (b) any restrictions or limitations contained in any deed conveying such Common Property to PCA; (c) certain Owners' rights to the exclusive use of those portions of the Common Property designated "Limited Common Property;" and (d) the Board's right to adopt rules regulating the use of the Common Property as set forth in Article X of this Declaration.

Section 11.2 Easements for Encroachments. Declarant grants reciprocal appurtenant easements for encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Property and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

Section 11.3 Easement for Utilities, etc.

(a) **Installation and Maintenance.** Declarant reserves for itself, so long as Declarant owns any property described on **Exhibit "A"** or **Exhibit "B"** of this Declaration or has the right to add property per Article II, and grants to the PCA and all utility providers (which may include governmental or quasi-governmental entities and/or any utility company), perpetual non-exclusive reciprocal and appurtenant easements throughout the Community (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing and constructing utilities and infrastructure to serve the Community, including cable and other telecommunication systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights, and signage on property which Declarant owns or within the Community rights-of-way or easements reserved for such purpose on recorded plats or within ten (10') feet of any boundary of a Unit;

(ii) inspecting, monitoring, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 11.3 (a)(i); and

(iii) access to read utility meters.

(b) **Drainage.** Declarant further reserves unto itself, its successors, assigns and licensees, the right to cut drainways for surface water wherever and whenever such action may appear to Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. Specifically, Declarant reserves unto itself, its successors and assigns a perpetual, alienable releasable easement and right, for drainage purposes, in varying dimensions and locations, as may be reasonable and necessary.

(c) Pesticides; Fire Control. In addition, the Declarant reserves unto itself, its successors, assigns and licensees, a perpetual, alienable and releasable easement and right on and over and under the Property to dispense pesticides and take other action which in the opinion of the Declarant is necessary or desirable to control insects and pests, and fire to cut firebreaks and take other actions which in the opinion of the Declarant are necessary or desirable to control fires on the Property.

(d) Water/Sewer Infrastructure. The Declarant further reserves unto itself, its successors, assigns and licensees, including, but not limited to, Dorchester County, the right to locate wells, pumping stations, siltation basins and tanks or spray treated waste water effluent within the Property on any unsubdivided land, in any Common Property or open space, or on any Property designated for such use on the applicable plat of the Property, or to locate same upon any Property with permission of the respective Owner. These reservations shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any assignee and/or licensee of Declarant or may be delegated or assigned to the PCA, but this reservation shall impose no responsibility upon Declarant to construct or maintain any such utility or service. Declarant expressly reserves the right to transfer said utilities and utility easements, in whole or in part, to another entity, whether public or private, which undertakes to provide such utility service.

(e) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any property within the Community. The Owner of any property to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not be unreasonably withheld, delayed, or conditioned.

(f) Use of Rights. Such easements and rights referenced in this Section 11.3 may be exercised by any licensee of Declarant and may be delegated to the PCA, but this reservation shall impose no responsibility upon Declarant to construct, provide or maintain any such utilities or service. Declarant reserves the right to transfer said the easements referenced in Section 11.3, in whole or in part, to another entity, whether public or private, which undertakes to provide such services.

(g) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Section 11.4 Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement on and over the Common Property for the purposes of enjoyment, use, access, and development of the Additional Property which is subject to be added to these Covenants by Declarant pursuant to Article II, whether or not such Additional Property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Property for construction of roads and for connection and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Property as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefitting from such easement is made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the PCA to share the cost of any maintenance which the PCA provides to or along any roadway providing access to such property.

Section 11.5 Easements for Maintenance, Emergency, and Enforcement. Declarant and the PCA, and their duly authorized agents, assignees, licensees and invitees, shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance (see Section 11.7 *supra*) or to inspect for the purpose of ensuring compliance with, and to enforce the Governing Documents without the Owner's consent. Emergencies shall include, but are not limited to, hurricanes, earthquakes or floods. Such entry shall not be deemed a trespass. Except in an emergency situation during which entry can be at the Declarant's discretion, entry shall only be during business hours and after a good faith effort to contact

the Owner of the accessed Unit has been made and notice given. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to Owner.

(a) **Indemnification.** Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this right of entry may result in additional damages, losses, costs and/or expenses, and each Owner, therefore, agrees on behalf of itself and the occupants of its Unit: (i) to take no action, legal or otherwise, and to release, discharge and waive any and all claims, demands or causes of action arising from any act or omission by the Declarant, its successors, successors-in-title, assigns, licensees, and invitees, unless such damage, loss or expense results solely from the wrongful acts or omissions by the Declarant, its successors, successors-in-title, assigns, licensees, and invitees ; and (ii) to take no action to recover damages for, or as the result of, any such activities.

(b) **Payment for Damages.** Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees to pay in full any and all costs and expenses associated with this right of entry in accordance with Section 3.11(h) *supra*.

Section 11.6 Easements for Wetland, Pond Maintenance and Flood Water. Declarant reserves for itself, the PCA, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon property adjacent to bodies of water, and wetlands located within or adjacent to the Community to: (a) install, operate, maintain, and replace pumps to supply irrigation water to the Common Property; (b) construct, maintain, and repair bulkheads, retaining walls, and other structures and equipment used for erosion control and/or maintenance of shorelines; and (c) maintain such areas. Declarant, PCA, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community abutting the Ashley River and Schultz Lake or abutting or containing bodies of water, freshwater or saltwater wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the PCA, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Property and Units (but not the Dwellings thereon) adjacent to or within thirty five (35') feet of the Ashley River and Schultz Lake, all wetlands within the Community, in order to: (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Property; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other third party liable for damage resulting from flooding due to heavy rainfall, or other natural occurrences.

Section 11.7 Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Units, and a perpetual, nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. By way of example only, this shall include the authority to (a) remove any debris, including trees, that may be leaning against any structure or that may be penetrating a structure on the Property to minimize further damage and (b) installing a "blue tarp" over the roof of any structure on the Property to prevent further water damage. Except in an emergency situation during which entry can be at the Declarant's discretion and without the Owner's consent, entry shall only be during business hours and after a good faith effort to contact the Owner of the accessed Unit has been made and notice given. The Person exercising this easement shall promptly repair, at such Person's expense, any damage resulting from such exercise.

Section 11.8 Access Easement for PCA. PCA and its directors, officers, agents and employees, including, but not limited to, any Management Agent of PCA and any officers, agents and employees of such Management Agent, shall have a general right and easement to enter upon any Property in the performance of their respective duties. Except in the event of emergencies, this easement shall be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner directly affected by roadway.

Section 11.9 Governmental Easement. Police, fire, health and other authorized governmental officials, employees and vehicles shall have the right of unrestricted ingress and egress to the Common Property for the performance of their official duties, subject to any procedures or policies that may lawfully be established by the Board.

ARTICLE XII
Limited Common Areas

Section 12.1 **Purpose.** Certain portions of the Common Property may be designated as Limited Common Area and reserved for the exclusive use of primary benefit of Owners and occupants within a particular grouping of Units, e.g. a Section. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, parking areas, landscaped medians and cul-de-sacs, alleys or alleyways, and other portions of the Common Property within a particular grouping of Units, or within a Section. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a collective expense allocated among those Owners in the grouping to which the Limited Common Areas are assigned. This expense would then be billed by the PCA as a Specific Section Assessment per Section 8.6 or to the specific grouping of Owner, if less than a Section.

Section 12.2 **Designation.** Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the PCA or on the subdivision plat relating to such Common Property; provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units so long as Declarant has a right to subject Additional Property to this Declaration pursuant to Article II.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the total Class "A" votes in the PCA. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Article II, any such assignment or reassignment shall also require Declarant's written consent.

ARTICLE XIII
Party Walls and Other Shared Structures

Section 13.1 **General Rules of Law to Apply.** Each wall, fence, driveway, dock or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 13.2 **Maintenance; Damage and Destruction.** The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribute from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

PART FIVE
GENERAL PROVISIONS

ARTICLE XIV
General Rights Reserved by Declarant

Section 14.1 **Rights, Easements Retained by Declarant.**

(a) **Easement for Access to Future Dock and Boat Ramp (if applicable).** Declarant reserves for itself, its successors, successors-in-title, assigns, licensees, and invitees, a perpetual, nonexclusive easement for access, ingress and egress through any gate limiting access, if any to the Community and over all streets within the Community for the purpose of constructing, gaining access to, repairing, and using any community dock(s) and boat ramp(s) which may be constructed, so long as they have any rights therein, and for the purpose of parking vehicles on such streets and designated parking areas, if any, while using facilities. This reserved right is also intended to allow Declarant to grant to the Office of Coastal Resource Management, Division of Department of Health and Environmental Control ("OCRM of DHEC"), as well as U.S. Corps of Army Engineers ("USCOE")

access to any community dock and boat ramp so that such governmental agencies may have community access to the waters of the Ashley River and Schultz Lake for testing, surveillance, and the like.

(b) Common Property Use for Events. Declarant reserves, creates, establishes and promulgates and declares for itself, its successors and assigns and designees, a perpetual non-exclusive easement over the Common Property for the purpose of conducting educational, cultural, entertainment or sporting events, or such other activities of a general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds and related inconveniences, each Owner agrees on behalf of itself and the occupants of its Unit, to take no action, legal or otherwise, which would interfere with the exercise of such easement, or to recover damages for, or as the result of any such activities.

Section 14.2 Permits and Approvals. During the development of the Community, Declarant may obtain certain permits, licenses and approvals ("Permits") from various federal, state and local authorities, examples of which would be development permits, water and sewer operating permits, construction permits, and the like. From time to time, and as part of the overall transition within the Community, Declarant may assign the rights and obligations under said Permits to PCA and, in such event, PCA shall assume, and be responsible for, compliance with the terms and provisions of the Permits as they may be amended from time to time, without any further act or action required of the Declarant. At such time, and thereafter, PCA shall protect, indemnify and save harmless the Declarant from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including, but without limitation, attorneys' fees and court expenses imposed upon, or incurred by, or asserted against, the Declarant on account of any of the foregoing. In case any action, suit or proceeding is brought against the Declarant by reason thereof, PCA, upon request by Declarant, will, at its expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel designated by Declarant.

Section 14.3 Ingress and Egress: Roadways.

(a) Each Owner, in accepting title to property conveyed subject to these Covenants, waives all rights of uncontrolled and unlimited egress and ingress to such property (and waives such rights for any person claiming entry rights by virtue of any relationship or permission of such Owner and successors in title) and agrees that such ingress and egress to its property may be limited to roads built by the Declarant.

(b) Further, it is recognized that as of the date of this Declaration certain roadways have been constructed and, in general, a plan of ingress and egress for the Community has been adopted by Declarant. Nonetheless, until the roadways and streets have been conveyed to Dorchester County or to the PCA, it is expressly reserved unto the Declarant the right to modify the ingress and egress plan within the Community, including the specific right to close roadways and streets, to re-route vehicular ingress and egress traffic, and, in general, to exercise all rights of control of the general traffic flow pattern within the Community on those roadways and streets not so conveyed to the Dorchester County or to the PCA. It is specifically stated that no implied, reciprocal equitable servitudes or easements shall arise with respect to any of these roadways or streets retained by Declarant until said roadways and/or streets are conveyed to the PCA.

(c) In order to provide for safe and effective regulation of traffic, the Declarant reserves the right to file of record the appropriate consent documents making the Uniform Act Regulating Traffic on Highways of South Carolina (Chapter V, Title 56 of the Code of Laws of South Carolina, 1976) applicable to all of the private streets and roadways within the Community. Moreover, the Declarant may promulgate from time to time additional parking and traffic regulations, which will supplement the above-mentioned State regulations as it relates to conduct on, over and about the private streets and roadways in the Community. These supplemental regulations will initially include but will not be limited to those set out hereinafter and the Declarant reserves the right to adopt additional regulations or to modify previously promulgated regulations from time to time and to make such adoption or modification effective thirty (30) days after mailing notice of same to the Owners as of January 1 of the year in which such regulations are promulgated.

(d) The Declarant, or the PCA after title to any private streets and roadways has passed to it from the Declarant, may post "no parking" signs along such private streets and roadways within the Community where it, in its sole discretion, determines it to be appropriate to do so. Violators of said "no parking" signs are subject to having their vehicles towed away and will be required to pay the cost of such towing and storage before their vehicle may be recovered. The act of towing said vehicles will not be deemed a trespass or a violation of the Owners' property rights, because the Owner will be deemed to have consented to such action by accepting the right to use the private roads and streets within the Community.

(e) The development plan for the Property is that the main roads, but not certain alleys or lanes, shall be public roads, owned and maintained by governmental authority. However, until dedication and acceptance of the roads by the governmental authority, they shall remain private and a part of the Common Property. The Declarant, and/or the PCA, shall have the right to dedicate any portion of the roadways within the Community to Dorchester County or to the State of South Carolina or any political subdivision thereof for the foregoing purpose of granting public access thereto and over said roadway and for the purpose of having said political subdivision assume responsibility for maintenance of such roadways. Furthermore, the Declarant and/or PCA, shall have the right to impose upon the PCA the requirement of maintaining any such dedicated roadway until such time as the roadway is brought up to standards acceptable to such public body and maintenance thereof is assumed by such public body; provided, however, the Declarant may, in its sole discretion, reserve an easement over any such public roadway to be primarily maintained by such public body for the purpose of doing additional maintenance to said public streets and roads and to maintain landscaping along the unpaved rights-of-way thereof, and thereafter denominate in a Supplemental Declaration that said easement will constitute Common Property of the Community to be maintained by the PCA. The Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote, pursuant to Section 8.5 hereof, in an amount sufficient to provide funds required to bring any roadway up to standards acceptable to any public body for the assumption by it of maintenance of a said roadway.

Section 14.4 Additional Covenants. Declarant expressly reserves the right to impose additional restrictive Covenants upon the said Property provided that the same are not inconsistent with and do not lower the standards of the restrictions as herein provided. Said additional Covenants, if any, shall be effective only upon Property transferred by Declarant simultaneously with or subsequent to the imposition of said Covenants and shall be made effective upon said Property by reference to said additional or amended provisions in the deed transferring said Property. It shall be the responsibility of each Owner within the Property to comply with any restrictions contained herein or any additional restrictions which may be imposed by governmental authorities.

Section 14.5 Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of Declarant for a period of forty (40) years from the execution of this Declaration, subject to the right reserved unto Declarant, its successors and assigns, to add additional restrictive covenants in respect to the Property subject to this Declaration and the further right to limit or amend the application of the Covenants herein contained. After the initial forty (40) year period of duration, all said Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners of Units substantially affected by such change of Covenants, has been recorded, agreeing to change said Covenants in whole or part.

Section 14.6 Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by grantee, its agents, successors or assigns, Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees. In addition to the foregoing, Declarant, its successors and assigns shall have the right, but not the obligation, to take enforcement action pursuant to Section 3.11 (h) *supra*. The failure to enforce any rights, reservations, restrictions or conditions contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The rights and powers of Declarant under this Section may be assigned to and vest concurrently in the PCA, and Declarant and the PCA shall have concurrent and independent rights of enforcement as provided herein upon the execution and recording of an assignment document by Declarant.

Section 14.7 Declarant Approval. Whenever any matter shall require the approval or consent of Declarant hereunder, or any other action or decision on behalf of Declarant, the vote of Declarant shall control in the event of any dispute.

Section 14.8 Right to Transfer or Assign Declarant Rights. Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other third parties; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and records. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

Section 14.9 Use of Trademark. Each Owner, by acceptance of a deed to any lands, tenements or hereditaments within the Property hereby acknowledges that "the Community", "the Community", "the Community Planned Development" and

designs are service marks and trademarks of the Declarant. Each Owner agrees to refrain from misappropriating or infringing these service marks or trademarks.

Section 14.10 Right to Develop. Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Property for the purpose of making, constructing, and installing such improvements to the Common Property as it deems appropriate in its sole discretion.

Every person that acquires any interest in the Community acknowledges that the Community is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to changes in uses or density of the commercially zoned property in the Community.

Section 14.11 Termination of Rights. The rights contained in this Article XIV shall not terminate until the earlier of (a) forty (40) years from the date this Declaration is recorded, or (b) recording by Declaration of a written statement that all sales activities has ceased.

Section 14.12 View Impairment. Neither the Declarant nor PCA guarantees or represents that any view over and across the Property from Units will be preserved without impairment. Declarant shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping or to install improvements or barriers (both natural or artificial) to the Community from time to time. Any additions or changes made by Declarant or PCA may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view of the Common Property or of the adjacent wetlands, Open Space or waterways which the Units may enjoy as of the date of purchase of the Unit, may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping, or other types of improvements or barriers (both natural or artificial) on the Property.

Section 14.13 Right of Repurchase. In consideration of the affirmative obligations of and benefits to all Owners provided by the Declarant under these Covenants, and in consideration of Declarant's active on-going interest and participation in the development and enhancement of the services, facilities and amenities available at the Community, when any Unit, either unimproved or improved, within the Community is offered for sale by the successors in title to the Declarant, the Declarant shall have the exclusive option and right of first refusal to purchase such Unit at the price and on the terms of any "bonafide offer" for such Unit made in writing to the Owner at such time and submitted to the Declarant for verification. Each Owner shall notify Owner of its intent to sell his Unit and the certified terms and conditions of the proposed sale as evidenced by a written and executed purchase agreement. The Declarant shall have thirty (30) days after receipt of such notice to the Declarant to exercise this purchase option. If the Declarant has not executed a contract for the purchase during this thirty (30) day period, the Owner may freely convey the Unit to the subject offeror. Should, however, such sale to a third party not be consummated within four (4) months of the date the offer is transmitted to the Declarant at the price and on the terms certified, the terms and limitations of this Section 14.13 shall again be imposed upon any sale of the Unit by the Owner. If the Declarant shall elect to purchase such Unit, the transaction shall be consummated on the terms offered; provided, however, the Declarant shall have a minimum of thirty (30) days from the delivery of notice to consummate the transaction.

ARTICLE XV **Amendments**

Section 15.1 Amendments. In addition to the specific amendment rights set forth elsewhere in this Declaration, as long as Declarant holds its Class "B" voting powers, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration or any portion thereof, on its own motion, to: (a) satisfy the requirements of any local, state or federal government agency; (b) correct typographical errors or to eliminate scrivener's errors; (c) bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (d) enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, e.g., the Federal National Mortgage Association, to make, purchase, insurance or guarantee mortgage loans in the Units, so long as the voting power of existing Members is not diluted thereby, nor the amounts of Assessments of such existing Members raised or changed in any manner which would adversely affect such Members.

As to other types of proposed amendments and all proposed amendments after the Class "B" vote is terminated, except as otherwise specifically provided elsewhere in this Declaration, this Declaration may be amended only by the affirmative, or written consent, or any combination thereof, of Owners representing seventy-five (75%) of the Class "A" votes held by Members

other than Declarant, and Declarant's consent, so long as Declarant owns any property subject to this Declaration. All proposed amendments shall first be approved by the Board and then submitted to a vote of the Members at a duly called meeting of the PCA. Notwithstanding the above, if a proposed amendment shall remove, revoke, modify, or affect in any way powers or rights of the Declarant, then such amendment shall require the consent of Declarant prior to becoming effective. Said amendments requiring the consent of Declarant shall include, but not be limited to, amendments which would increase the amounts of Assessments paid by such properties or owners, amendments which would impose toll charges for users of roadways accessing such properties, or any other amendments which would otherwise affect the operation and reserved rights of Declarant.

If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the PCA shall execute an addendum to this Declaration which shall set forth the amendment, the effective date of the amendment, the date of the meeting of the PCA at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes necessary to adopt the amendment, and the total number of votes cast against the amendment.

ARTICLE XVI

Notice

Section 16.1 How Notice Given. Any notice required to be sent to any Owner under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the last known address of the person or entity who appears as Owner in the public records of Dorchester County, South Carolina, as applicable, on the first day of the calendar month in which said notice is mailed.

Notice to Declarant shall be sent to Greenwood Development Corporation, 104 Maxwell Avenue, P. O. Box 1546, Greenwood, SC 29648, Attn: Vice President/General Counsel, with a copy to the McNair Law Firm, P.A., 23-B Shelter Cove Lane, Suite 400, P. O. Drawer 3, Hilton Head Island, SC 29938.

Section 16.2 Notice to Co-Owners. Notice to one (1) of two (2) or more co-Owners of a Unit or Dwelling, shall constitute notice to all co-Owners.

Section 16.3 Notice of Address or Ownership Change. It shall be the obligation of every Member to immediately notify the Secretary of the PCA in writing of any change of address. Any person who becomes an Owner and Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor-in-title.

ARTICLE XVII

Enforcement, Severability and Interpretation

Section 17.1 Who May Enforce Generally. Enforcement of these covenants and restrictions in this Declaration shall be by any proceeding at law or in equity brought by any Owner or agent of such Owner, the Declarant, PCA or any other Owners, or any of them, jointly and severally, against any person or persons violating or attempting to violate or circumventing or attempting to circumvent any covenant or restriction, either to restrain or to enjoin violating or to recover damages; provided, however, that the right of the Declarant and of PCA under this section, shall not be construed to impose an obligation on the Declarant or on PCA for enforcement.

Section 17.2 Attorney Fees. In the event a proceeding at law or in equity is brought by any Owner or agent of such Owner, the Declarant, PCA, or any other Owner, or any of them, jointly or severally, against any person or persons violating or attempting to violate or circumventing or attempting to circumvent any covenant or restriction set forth in this Declaration, the person or persons violating or attempting to violate or circumventing or attempting to circumvent any covenant or restriction shall be obligated to reimburse the Owner, or agent of such Owner, the Declarant, PCA or any other Owner, or any of them, jointly and severally, in full for their direct and indirect costs, including, but not limited to, legal fees and costs incurred in maintaining compliance with this Declaration in the event that they, or any of them, prevail in such proceeding.

Section 17.3 Against Whom May the Covenants be Enforced. The obligations and benefits prescribed by the Covenants shall run with the Property and shall be enforceable against the Declarant, its successors or assigns, the PCA and against any Owner or other person whose activities bear a relation to the Property when the aforesaid parties engage in activities (including

omissions and failures to act) which constitute violations or attempts to violate or circumvent the covenants and restrictions set forth in this Declaration.

Section 17.4 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the PCA unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast by the Members. This Section shall not apply, however, to (a) actions brought by the PCA to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the PCA in proceedings instituted against it. In the event any claim is made against Declarant or any litigation is instituted against Declarant, then the PCA shall assess all Members, other than the Declarant, for the costs of claim or litigation, including, without limitation, attorneys' fees incurred, and funds from regular Assessments shall not be used for any such claim or litigation.

Section 17.5 Means of Enforcement. Enforcement of these Covenants shall be by any proceeding at law or in equity, whether it be to restrain violation or to recover damages or to create any lien created by these Covenants.

Section 17.6 Severability. Should any Covenant or restriction herein contained, or any Part, Article, Section, paragraph, sentence, clause, phrase, or term in this Declaration be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matters and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

Section 17.7 Rule Against Perpetuities. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of President George W. Bush and the original Owners of Units in the Property.

Section 17.8 Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants, and which will preserve the Property as a situs for a high amenity, attractive, well maintained, privately-governed residential community.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Covenants, to covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant and/or PCA, and any other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 17.9 Authorized Action. All action which the PCA is allowed to take under this instrument shall be authorized actions of the PCA if approved by the Board in the manner provided for in the By-Laws of the PCA, unless the terms of this instrument provided otherwise.

Section 17.10 Gender, Tense and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 17.11 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 17.12 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

Section 17.13 No Implied Liabilities or Duties. ANY RULES OR REGULATIONS ESTABLISHED BY THE DECLARANT OR PCA PURSUANT TO THESE COVENANTS SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY OWNER.

PART SIX
PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

ARTICLE XVIII
Dispute Resolution and Limitation on Litigation

Section 18.1 Agreement to Encourage Resolution of Disputes Without Litigation

(a) Bound Parties. The Declarant, the PCA 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 the Community 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 18.1(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

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

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Article III, which shall not be subject to review and shall not be subject to this section.

(c) The following shall not be considered 'Claims' unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

- (i) any suit by the PCA to collect Assessments or other amounts due from the Owner;
- (ii) any suit by the PCA 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 PCA's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);
- (iii) any suit that does not include the Declarant or the PCA as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (iv) 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 18.2; and
- (v) 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 18.2(a), 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.

Section 18.2 Dispute Resolution Procedures

(a) 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:

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

- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **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.

(c) **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 PCA (if the PCA is not a party to the Claim) or to an independent agency providing dispute resolution services in the Dorchester and/or Charleston County, South Carolina area (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.

(d) **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.

**DISPUTE RESOLUTION TIME LINE
CLAIM BETWEEN BOUND PARTIES**

Day 1	Day 2-30	Day 31-60	Day 61-90+
Written Claim of Notice	Negotiations	Request Mediation	Mediation
Factual Basis Legal Basis Propose a resolution Send copy to Board	Good faith effort Parties to meet in person May request Board assistance	Claimant must submit claim Mediator assigned by PCA or independent agency If Claim is not submitted, it is waived	Agency supplies rules Fee split between parties Written summary from each side Supervised negotiation Contractual settlement Termination of Mediation

Section 18.3 Initiation of Litigation by PCA

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the PCA 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 PCA, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the period when Declarant retains its Class "B" membership;
- (b) initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the PCA or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute litigation proceedings per Section 17.4.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed the day and year first above written by its appropriate officers.

WITNESSES:

DECLARANT:

Greenwood Development Corporation:

Dianne Scott
Caryn J. Randall

By: Julian J. Nexsen, Jr.
Julian J. Nexsen, Jr., President

Attest: William B. Watkins
William B. Watkins
Assistant Secretary

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Julian J. Nexsen, Jr. and William B. Watkins, as the respective President and Assistant Secretary of Greenwood Development Corporation, on behalf of the Declarant, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 17th day of May, 2007.

Caryn J. Randall (SEAL)
Notary Public for South Carolina
My Commission Expires: 2-4-08

EXHIBIT "A"
TO
DECLARATION OF COVENANTS
RESTRICTIONS, EASEMENTS, LIMITATIONS
AND PROVISIONS FOR MEMBERSHIP IN THE
PONDS COMMUNITY ASSOCIATION

"PROPERTY" PER SECTION 2.1

All those certain pieces, parcels or tracts of land lying and being in Dorchester County, South Carolina, and being shown and depicted on a plat entitled "A Final Subdivision Plat, Phase 1, The Ponds, prepared for Greenwood Development Corporation, located in Dorchester County, South Carolina", Sheets 1 through 11 (the "Plat"), said Plat being dated May 16, 2007, prepared by Thomas & Hutton Engineering Company, F. Elliotte Quinn III, S.C. P.L.S. #10292, said property having and containing approximately 91.05 acres and consisting of the following:

Rights-of-way of 23.41 acres
Alleyways of 3.55 acres
Property designated as Parcels A through F of 13.85 acres
Lots numbered 1 through 213 and pump station of 38.21 acres
Parcels designated as PCA Common Properties of 10.27 acres
Ingress-egress utility easements consisting of 1.76 acres

All acreage references are approximations. In case of conflict between the above description and the Plat, the Plat shall be controlling.

Said Plat referenced above is recorded in the RMC Office for Dorchester County in Plat Cabinet L at Slide 63 through 64.

The property described herein is a portion of the property conveyed to Greenwood Development Corporation by Deed from Ponds Plantation, L.L.C. dated May 5, 2004, recorded in the Office of the Register of Deeds for Dorchester County in Book 4700, Page 360, et seq.

EXHIBIT "B"
TO
DECLARATION OF COVENANTS
RESTRICTIONS, EASEMENTS, LIMITATIONS
AND PROVISIONS FOR MEMBERSHIP IN THE
PONDS COMMUNITY ASSOCIATION

ALL that certain piece, parcel or tract of land, situate, lying and being in Dorchester County, South Carolina, containing 1,948.74 acres, more or less, being shown on a plat entitled "Plat of Two Tracts Containing 1948.74 Acres Total, Known as Ponds Plantation, Prepared for Greenwood Development Corporation," dated April 16, 2005, prepared by Thomas & Hutton Engineering Co., certified to by F. Elliotte Quinn, III, SCRLS No. 10292, and recorded in the Dorchester County Records in Plat Cabinet K-149. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat.

AND

ALL that certain piece, parcel or lot of land, situate, lying and being on the west side of U.S. Highway 17-A, South School District #2, Dorchester County, State of South Carolina, being shown and designated as Lot 3, containing 2.05 acres, more or less, on a plat prepared by Palmetto Land Surveying Co., Inc., certified to by James G. Penington, PLS No. 10291, dated December 1, 1997, and recorded in the Dorchester County Records in Plat Cabinet K-1. For a more detailed description as to the metes and bounds, courses and distances, reference is had to the aforementioned recorded plat, less and except that certain parcel of land containing 0.45 acre, more or less, shown as the "Area of Acquisition" at the intersection of SC Route 61 and US Route 17A West on Exhibit A attached to Deed from Greenwood Development Corporation to South Carolina Department of Transportation recorded in the Dorchester County Records in Book 5373 at Page 55.

LESS AND EXCEPT: That certain property described on Exhibit "A" to this Declaration.

EXHIBIT "C"
TO
DECLARATION OF COVENANTS
RESTRICTIONS, EASEMENTS, LIMITATIONS
AND PROVISIONS FOR MEMBERSHIP IN THE
PONDS COMMUNITY ASSOCIATION

BY-LAWS OF PONDS COMMUNITY ASSOCIATION

BY-LAWS
OF
PONDS COMMUNITY ASSOCIATION

**ARTICLE 1
GENERAL PROVISIONS**

Section 1.1 Organization and Purpose. Ponds Community Association ("Association" or "PCA") 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 mixed use properties within the planned unit development located in Dorchester County, South Carolina, and known as The Ponds ("Ponds" or "Community") in accordance with the Declaration of Covenants, Conditions and Restrictions for The Ponds recorded by Greenwood Development Corporation, as Declarant, in the ROD 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 PCA.

Section 1.2 Principal Office. The principal office of the PCA shall initially be located in Greenwood County and ultimately 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
INTEGRATED COMMUNITY**

The Declarant, Greenwood Development Corporation, has executed a Development Agreement with Dorchester County, which Development Agreement is defined in the Declaration and is recorded in the RMC Office for Dorchester County in Book 5100 at Page 2, et seq. Both the Development Agreement and the Declaration referenced above recognize that the Community is intended to be a blend of single-family residential, multi-family residential (including condominiums), apartments, civic, schools/institutional, and commercial, including retail establishments. All such uses will be subject to the Declaration and all Owners of property within the Community, regardless of use designation, shall be Members of the PCA.

**ARTICLE 3
MEMBERSHIP; MEETINGS OF MEMBERS**

Section 3.1 Members. The PCA shall have two (2) classes of Members, Class "A" and Class "B", all as more fully described in Article VI of the Declaration. Each class of Members shall have such rights and privileges as are specifically granted to such class under the Governing Documents. The provisions of the Declaration and other Governing Documents pertaining to membership in the PCA are incorporated herein by reference.

Section 3.2 Voting Rights. The rights of Members to vote on matters arising before the PCA shall be specifically set forth in Article VI of the Declaration and other Governing Documents, which voting rights provisions are incorporated herein by reference. Because of the different use classifications of properties within The Ponds, the allocation of voting rights between Members shall be weighted based upon the type of Unit as described in Section 6.4 of the Declaration. The voting rights of any Members within a Section, if applicable, shall be governed by Section 6.5 of the Declaration. Except as otherwise specified by the Governing 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 3.3 Annual Meeting. The first annual meeting of the Members shall be held within three (3) months from the date of incorporation of the PCA, 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 first day following which is not a legal holiday.

Section 3.4 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 (1/4) of all of the votes of the Class "A" membership.

Section 3.5 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 PCA or supplied by such Member to the PCA 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 PCA, its Board of Directors, and committees, shall, at the Board's discretion, also be posted in the PCA's official publication, if any, or conspicuously posted in the Village Center and/or other Common Property.

Section 3.6 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 3.7 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 PCA 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 3.8 Manner of Voting. Except as otherwise specified in the Governing 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 3.9 Waiver of Notice. Any Member may waive notice of a meeting of the PCA 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 3.10 Conduct at Meetings. The President shall preside over PCA meetings. In his or her absence, the Vice President shall preside. To the extent consistent with the Governing Documents, the meeting shall be conducted according to the most current edition of Robert's Rules of Order.

ARTICLE 4
BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 4.1 Number. The affairs of this PCA shall be managed by a Board of Directors (having the same meaning as a "Board" under S.C. Code §33-31-140). As the Community grows, the size of the Board of Directors will grow as well, the purpose being to provide representation of varying interests within the Community on the Board. Similarly, the method of selecting members to the Board will be modified as well. The Board shall initially consist of three (3) individuals appointed by the Class "B" Member. Once the Class "B" membership terminates, the Board shall consist of seven (7) individuals who shall be elected by the Class "A" Members. All Board of Directors shall be Members of the PCA, whether appointed by the Class "B" Member or the Class "A" Members.

Section 4.2 Manner and Timing of Selection

(a) Except as otherwise provided in this Section 4.2, 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 ten (10%) percent of the Units permitted by the Development Agreement for the Property described in Exhibits "A" and "B" to the Declaration, 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 (e), a successor shall be elected for a like term.

(c) Within ninety (90) days after the time that Class "A" Members, other than Declarant, own twenty-five (25%) percent of the Units permitted by the Development Agreement for the property described in Exhibits "A" and "B" to the Declaration, or whenever the Class "B" Member earlier determines, the Board of Directors shall be increased to five (5) directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect two (2) of the five (5) directors. The remaining three (3) directors shall be appointees of the Class "B" Member. Directors 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) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subparagraph (e) below, the successors shall be elected for a like term.

(d) Within ninety (90) days after the time that Class "A" Members, other than Declarant, own fifty (50%) percent of the Units permitted by the Development Agreement for the property described in Exhibits "A" and "B" to the Declaration, or whenever the Class "B" Member earlier determines, the Board of Directors shall be increased to seven (7) directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect three (3) of the seven (7) directors. The remaining three (3) directors shall be appointees of the Class "B" Member. Directors 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) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subparagraph (e) below, the successors shall be elected for a like term.

(e) Within the latter of (i) the next Annual Meeting Date or (ii) 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 seven (7) directors in accordance with Section 4.3 *infra*. The four (4) elected directors per subparagraph (d) may stand for election for new terms. Three (3) directors shall serve a term of two (2) years; two (2) directors shall serve a term of three (3) years; and two (2) directors shall serve a term of one (1) year as such directors determine among themselves. 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.

Section 4.3 Designated Board Seats. Prior to the termination of the Class "B" membership and, accordingly, the Class "B" vote, there shall be seven (7) At Large Board Seats. The seven (7) directors elected for the At Large Board Seats will be chosen in accordance with Section 4.2 *supra*. Upon termination of the Class "B" membership, however, there shall be specific Board seats reflecting the different types of uses as referenced in the Declaration because the Community is ultimately to be diverse and the goal of the By-Laws is that the membership of the Board likewise be diverse and representative of the various interests within the Community. The specific Board seats, therefore, shall be as follows:

(a)	Civic Use	=	1 Board seat
(b)	Multi-Family Residential Use	=	1 Board seat
(c)	Single-Family Residential Use	=	2 Board seats
(d)	Non-Residential Use	=	2 Board seats
(e)	At Large	=	1 Board seat
Total		=	7

While all Class "A" Members shall be entitled to elect the one (1) director for the At Large Board Seat, only those Class "A" Members who are Owners of Multi-Family Residential Units may elect the one (1) director for the Multi-Family Residential Use Board Seat, only those Class "A" Members who are Owners of Single-Family Residential Units may elect the two (2) directors for the Single-Family Residential Board Seats, and only those Class "A" Members who are Owners of Non-Residential Units may elect the two (2) directors for the Non-Residential Board Seats. The initial instrument of conveyance to Declarant of each Unit within the Property shall designate whether the parcel is: (a) Multi-Family Residential ("MF"); (b) Single-Family Residential ("SF"); (c) Non-Residential ("N-R"); or (d) Civic ("Civic"). Class "A" Members should refer to this designation to determine which director they are entitled to elect. Regardless of whether the Class "B" membership has terminated, the Declarant reserves the right to appoint the one (1) director for the Civic Board Seat. Declarant may, in its sole discretion, assign such right to the Board, or may chose to give up such right actively, in which case the Civic Board Seat shall thereafter be treated in the same manner as the At Large Board Seat with all Class "A" Members voting.

ARTICLE 5 NOMINATIONS AND ELECTIONS

Section 5.1 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 five (5) 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 5.1. 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 5.2 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 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 5.3 **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 PCA, 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 5.3 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 6 MEETINGS

Section 6.1 **Organizational Meeting.** The first meeting of the Board of Directors following each annual meeting of the PCA shall be held within ten (10) days thereafter at such time and place as the Board of Directors shall fix.

Section 6.2 **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 four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter.

Section 6.3 **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 6.4 **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 PCA. 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 6.5 **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 6.6 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 6.7 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 6.8 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 7 POWERS AND DUTIES

Section 7.1 General Authority. The Board of Directors shall be responsible for conducting the affairs of the PCA and shall be authorized to exercise all rights and powers of the PCA and to do all acts and things on behalf of the PCA except those which the Governing 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 PCA's affairs.

Section 7.2 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 PCA'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 Property and open space;
- (d) designating, hiring, and dismissing personnel necessary to carry out the PCA'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 PCA and designating the signatories required;
- (f) depositing all funds received on behalf of the PCA in a bank depository which it shall approve, and using such funds to operate the PCA; 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 Property in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Governing 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 PCA;
- (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 PCA;
- (l) keeping books with detailed accounts of the PCA'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 Governing Documents and all other books, records, and financial statements of the PCA as required by these By-Laws;
- (n) permitting utility suppliers to use portions of the Common Property reasonably necessary to the ongoing development or operation of the Ponds;
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the PCA 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 and which may include, by way of example, services for Owners relating to shopping, cultural events, health care, etc. and transportation for such services.

ARTICLE 8 OFFICERS AND THEIR DUTIES

Section 8.1 Designation of Officers. Officers of the PCA 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 8.2 Election and Term of Office. The Board of Directors shall elect the PCA's officers at the first Board of Directors meeting following each annual meeting of the Members, to serve until their successors are elected.

Section 8.3 Removal and Vacancies. The Board of Directors may remove any officer whenever in its judgment the best interests of the PCA 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 8.4 Powers and Duties of Officers. The PCA'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 PCA. 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 9 MANAGEMENT

Section 9.1 Committees. In addition to those committee specifically authorized elsewhere in the Governing 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 9.2 Management Agent. The Board of Directors may employ for the PCA 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 7.2.

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 9.3 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 PCA 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 PCA. Any officer or director may be reimbursed for expenses incurred on behalf of the PCA upon approval of a majority of the directors other than the director requesting the reimbursement, if applicable. Nothing herein shall prohibit the PCA from compensating an officer or director, or any entity with which an officer or director is affiliated, for services or supplies furnished to the PCA in a capacity other than as an officer or director pursuant to a contract or agreement with the PCA, 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 9.4 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 PCA, 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 Ponds, or diminish the level of services being provided by the PCA.

(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 PCA, 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 PCA, and such notice shall comply with the notice requirements otherwise set forth in these By-Laws for meetings of the PCA 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 PCA.

Section 9.5 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 PCA.

Section 9.6 Right to Contract. The PCA 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 Ponds. Any common management agreement shall require the consent of a majority of the Board of Directors.

ARTICLE 10 ACCOUNTING AND FINANCIAL MATTERS

Section 10.1 The PCA's fiscal year shall be the calendar year unless the Board of Directors establishes a different fiscal year by resolution.

Section 10.2 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 PCA 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 PCA, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise;
- (e) any thing of value received shall benefit the PCA; and
- (f) any financial or other interest which the managing agent may have in any firm providing goods or services to the PCA shall be disclosed promptly to the Board of Directors.

Section 10.3 Financial Reports.

- (a) **Quarterly Reports.** Commencing at the end of the quarter in which the first Unit is sold by Declarant, financial reports shall be prepared for the PCA 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 10.4 Borrowing. The PCA 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 PCA'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 PCA, plus the Class "B" Member's consent if the Class "B" membership still exists.

ARTICLE 11

STANDARDS OF CONDUCT; LIABILITY AND INDEMNIFICATION

Section 11.1 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 Governing 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 Governing 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 alike 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 11.2 Liability.

- (a) A director shall not be personally liable to the PCA, 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 11.1.
- (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 Governing Documents;
 - (ii) affirmatively undertakes to make decisions which are necessary for the PCA'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 PCA's affairs.
- (c) The officers, directors, and committee members of the PCA 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 PCA (except to the extent that such officers or directors may also be Members of the PCA).

Section 11.3 Indemnification. Subject to the limitations of South Carolina law, the PCA 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 PCA 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 PCA, 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 PCA;
 - (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 PCA 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 11.4 Advancement of Expenses. Subject to the requirements and limitations of South Carolina law, the Board may authorize the PCA 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 PCA.

ARTICLE 12 ENFORCEMENT

Section 12.1 Covenants Committee. The Board of Directors may appoint a Covenants Committee consisting of at least three (3), and no more than seven (7), 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 PCA and shall conduct all hearings held pursuant to this Article 12 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 12.2 Notice and Hearing Procedures. The PCA shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, 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 PCA 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 12.3 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 PCA'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 13 MISCELLANEOUS

Section 13.1 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 13.2 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 Governing 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 PCA's office or at such other place within "The Ponds" 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 of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing 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 PCA and the physical properties owned or controlled by the PCA. The right of inspection by a director includes the right to make a copy of relevant documents at the PCA's expense.

Section 13.3 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 PCA, the Board of Directors, or the managing agent, at the principal office of the PCA 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 PCA or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 13.4 Amendments. For a period of two (2) years after the incorporation of the PCA, the Class "B" Member shall have the right to amend these By-Laws to correct scrivener errors, meet requirements of Institutional Lenders, or for other reasons deemed by the Class "B" Member to be beneficial, provided that such amendment does not materially adversely affect the rights of any Owner hereunder, otherwise and thereafter. These By-Laws may 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 Governing 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 PCA'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.

HILTONHEAD-#630354-v9 101595.00285