

**THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO  
THE SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10, et seq. CODE OF  
LAWS OF SOUTH CAROLINA, 1976**

**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**SUN CITY HILTON HEAD**

SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR SUN CITY HILTON HEAD

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**EXHIBIT "B": LAND SUBJECT TO ANNEXATION**

**EXHIBIT "C": INITIAL USE RESTRICTIONS**

**EXHIBIT "D": RULES OF ARBITRATION**

**EXHIBIT "E": BYLAWS**

**THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO  
THE SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10, et seq., CODE OF  
LAWS OF SOUTH CAROLINA, 1976**

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR SUN CITY HILTON HEAD**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUN CITY HILTON HEAD ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by Del Webb Communities, Inc., an Arizona corporation, its successors and assigns, (herein referred to as the "Declarant").

RECITALS:

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, dated September 8, 1994, ("Initial Declaration"), and caused the Declaration to be recorded at Book 729, Page 1497, in the Register of Deeds for Beaufort County, South Carolina ("ROD"); and

WHEREAS, Declarant subsequently executed and recorded amendments and supplemental declarations to the Initial Declaration, including, without limitation, the following amendments and supplemental declarations (the "Subsequent Amendments"), which Initial Declaration, Subsequent Amendments, this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions, and all other amendments and supplemental declarations, are hereinafter collectively referred to as the "Declaration":

1. First Amendment, July 14, 1997, recorded in Deed Book 958 at Page 2595, in the ROD;
2. Second Amendment, August 3, 1999, recorded in Deed Book 1199 at Page 2524, in the ROD;
3. Third Amendment, May 31, 2000, recorded in Deed Book 1296 at Page 2561, in the ROD;
4. Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded May 17, 2002, in Deed Book 1582 at Page 407, in the ROD;
5. First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded October 24, 2003, in Deed Book 1860 at Page 2193, in the ROD;
6. Second Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded April 13, 2004, in Deed Book 1937 at Page 1677, in the ROD;

7. Third Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded July 21, 2005, in Deed Book 2191 at Page 2059, in the ROD;

8. Fourth Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded February 28, 2007, in Deed Book 2529 at Page 351, in the ROD;

9. Fifth Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded July 14, 2008, in Deed Book 2745 at Page 730, in the ROD;

10. Various Amended Supplemental Declarations of Covenants, Conditions and Restrictions for Sun City Hilton Head relating only to certain portions of the Property subject to the Declaration; and

WHEREAS, Declarant (a) is, or was at the time, the owner of the real property described in Exhibits "A," or "B", attached hereto and incorporated herein by this reference, and (b) is, or was at the time, the owner of the real property subjected to the Declaration and described in any exhibits to the Subsequent Amendments; and

WHEREAS, Section 19.2 of the Declaration states, in part: "Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose"; and

WHEREAS, the Class "B" membership has not terminated, and

WHEREAS, Declarant desires to amend the Declaration in order to (a) incorporate the amendments and supplements to the Initial Declaration and (b) clarify other issues and provisions of the Declaration.

NOW, THEREFORE, DECLARANT RESTATES AND AMENDS THE DECLARATION AS FOLLOWS:

The recitals set forth above are incorporated herein by reference.

This Declaration imposes upon the Properties (as defined in Article I) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. The Properties shall be held, sold, used and conveyed subject to the following provisions, easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of, and which shall run with, the Properties. This Declaration shall be binding on and shall inure to the benefit of all Persons having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, legal representatives, and assigns.

#### **ARTICLE I: DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Area of Common Responsibility": The Common Area, together with those areas, if any, which, by the terms of this Declaration, any Supplemental Declaration or other applicable covenants approved by Declarant, any plat approved or authorized by Declarant, or by contract, become the responsibility of the Association.

1.2 "Articles": The Articles of Incorporation of Sun City Hilton Head Community Association, Inc., as filed with the South Carolina Secretary of State.

1.3 "Association": Sun City Hilton Head Community Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

1.4 "Base Assessment": Assessments levied on all Lots subject to assessment to fund Common Expenses for the general benefit of all Lots, as more particularly described in Section 10.3.

1.5 "Beaufort County Development Agreement": The Development Agreement between Del Webb Communities, Inc., and the County of Beaufort, South Carolina, dated December 16, 1993, and recorded at Deed Book 683, Page 967, et seq., Register of Deeds of Beaufort County, South Carolina and by this reference incorporated herein, as it may be amended. (The Beaufort County Development Agreement and the Jasper County Development Agreement may be referred to herein jointly as the "Development Agreements").

1.6 "Benefitted Assessment": Assessments levied pursuant to Section 10.7.

1.7 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws.

1.8 "Business" and "Trade": Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.9 "Bylaws": The Bylaws of Sun City Hilton Head Community Association, Inc. attached hereto as Exhibit "E" and incorporated by reference, as they may be amended from time to time.

1.10 "Class "B" Control Period": The period ending on the date that the Class "B" Membership shall cease, as set forth in Section 3.3.

1.11 "Common Area": All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and



enjoyment of the Owners, including easements held by the Association for those purposes. The term shall include the Exclusive Common Area, as defined below, and may include entry features, landscape medians, cul de sacs, lakes, ponds, rivers, streams, wetlands, preservation areas, and Golf Courses, if any.

1.12 "Common Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles.

1.13 "Community Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors or any other entity which is given authority to determine the standard pursuant to this Declaration or the Bylaws, such as the Covenants Committee or the Modifications Committee.

1.14 "Contiguous Property": Any property of which a portion adjoins or borders Sun City Hilton Head or which is separated from Sun City Hilton Head only by roads, rights-of-way, waterways, or natural boundaries.

1.15 "Covenants Committee": The entity responsible for hearings regarding violations of certain provisions of this Declaration pursuant to Article XVII.

1.16 "Covenant to Share Costs": Any declaration of easements and covenant to share costs executed by Declarant and recorded in the Register of Deeds for Beaufort or Jasper County which creates easements for the benefit of the Association and the present and future owners of the real property subject thereto and which obligates the Association and such owners to share the costs of maintaining certain property described therein.

1.17 "Declarant": Del Webb Communities, Inc., an Arizona corporation, or any successor, successor in title, or assign of Del Webb Communities, Inc., who has or takes title to any Contiguous Property or to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or resale in the ordinary course of business and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.18 "Design Guidelines": The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, adopted pursuant to Article XI and applicable to the Properties.

1.19 "Dwelling Unit": Any building or structure or portion of a building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family, including by way of illustration but not limitation, condominium units, patio or zero lot line homes, and single family detached houses.

1.20 "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Section 2.4.

1.21 "Golf Course": Any parcel of land adjacent to or within the Properties developed by the Declarant or any affiliate or designee of the Declarant (a) which is owned by the Association or which is a Private Amenity, and (b) which is operated as a golf course, and all related and supporting facilities and improvements operated and/or maintained in connection with or incidental to such golf course.

1.22 "Governing Documents" The Declaration and any Supplemental Declaration, the Bylaws, rules and regulations, the Design Guidelines, the Use Restrictions, or any document authorized pursuant to any of them, as amended from time to time.

1.23 "Home Owner": An Owner other than the Declarant.

1.24 "Jasper County Development Agreement": The Development Agreement between Del Webb Communities, Inc., and the County of Jasper, South Carolina, dated July 28, 1994, and recorded at Deed Book 136, Page 107, et seq., Register of Deeds of Jasper County, South Carolina and by this reference incorporated herein, as amended from time to time.

1.25 "Lot": A contiguous portion of the Properties, whether improved or unimproved, other than Common Area, common property of any Neighborhood, and property dedicated to the public, which may be independently owned and conveyed and which is intended to be developed, used, and occupied with an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, thereon. The term shall include, by way of illustration but not limitation, condominium units, cluster homes, patio or zero lot line homes, and single family detached houses on separately platted lots, as well as vacant land intended for development as such. In the case of any structure containing multiple Dwelling Units, each Dwelling Unit shall be deemed to be a separate Lot. Prior to recordation of a subdivision plat, a parcel of vacant land or land on which improvements are under construction shall be deemed to contain the number of Lots designated for residential use for such parcel on the applicable preliminary plat or site plan approved by Declarant, whichever is more current. Until a preliminary plat or site plan has been approved, such parcel shall contain the number of Lots set by Declarant in conformance with the Master Plan.

1.26 "Master Plan": The master plan for the development of Sun City Hilton Head filed with Beaufort County and Jasper County, South Carolina, as it may be amended, updated, or supplemented from time to time, which plan includes the property described on Exhibit "A" and a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. The Master Plan may also include subsequent plans approved by Beaufort County or Jasper County, South Carolina for the development of all or a portion of the property described on Exhibit "B" and/or any Contiguous Property which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration nor shall the exclusion of property from the Master Plan bar its later annexation in accordance with Article IX.

1.27 "Member": A Person entitled to membership in the Association.

1.28 "Modifications Committee": The entity responsible for review of certain modifications pursuant to Section 11.2.

1.29 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.30 "Mortgagee": A beneficiary or holder of a Mortgage.

1.31 "Neighborhood": Each separately designated residential area within the Properties, as more particularly described in Section 3.5. By way of illustration and not limitation, a townhome development, cluster home development, or single family detached housing development might each be designated as a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

1.32 "Neighborhood Assessments": Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 10.4.

1.33 "Neighborhood Committee": Any committee established by the Board for a Neighborhood. The Chairman of this Committee is the Neighborhood Representative.

1.34 "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve contribution, as the Board may specifically authorize and as may be authorized herein or in a Supplemental Declaration applicable to a Neighborhood.

1.35 "Neighborhood Representative": The representative elected by the Owners within each Neighborhood responsible for chairing the Neighborhood Committee, if formed and for casting the votes attributable to Lots in the Neighborhood on matters not requiring a vote of the Owners. The term Neighborhood Representative shall include Alternate Neighborhood Representatives acting in the absence of the Neighborhood Representative.

1.36 "New Member Fee": The fee charged pursuant to Section 3.2.

1.37 "Owner": One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation, in which case the equitable owner, not the Person holding an interest as security, will be considered the Owner.

1.38 "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.39 "Private Amenities": Real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, developed by the Declarant or any affiliate or designee of the Declarant, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis, use fee

basis, or otherwise. For example, any Golf Course owned and operated by Persons other than the Association shall be a Private Amenity.

1.40 "Properties": The real property described in Exhibits "A" and "B", attached hereto and incorporated herein by reference, together with such additional property subjected to this Declaration in accordance with Article IX.

1.41 "Qualifying Occupant": At least one individual who meets the age standards set forth in Section 2.3.

1.42 Register of Deeds" or "ROD": The Register of Deeds for Beaufort County or Jasper County, South Carolina, as applicable.

1.43 "Rules and Regulations": Rules and regulations adopted by the Board of Directors pursuant to the Governing Documents.

1.44 "Special Assessment": Assessments levied pursuant to Section 10.6.

1.45 "Sun City Hilton Head": The Properties as described in Section 1.40.

1.46 "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and identifies a Common Area within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.47 "Use Restrictions": The rules and use restrictions attached hereto as Exhibit "C" and incorporated by reference, as they may be modified, cancelled, limited or expanded under Article XII.

## **ARTICLE II: PROPERTY RIGHTS**

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Dwelling Units and their guests, rules limiting the number of occupants and guests who may use the Common Area, and rules designating certain portions of the Common Area as gardening plots for Owners and occupants and regulating the use thereof;

(d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 4.2;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to governmental entities pursuant to Section 4.5;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any recreational facility situated upon the Common Area;

(g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Board to create, enter agreements with, grant easements to and transfer portions of the Common Area to tax-exempt organizations under Section 4.11;

(i) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(j) The rights of certain Owners to the exclusive use of those portions of the Common Area designated as Exclusive Common Areas, as more particularly described in Section 2.4; and

(k) The right of the Association to rent or lease any portion of any clubhouse and other recreational facilities within the Common Area on a short-term basis to any Owner for the exclusive use of such Owner and such Owner's family and guests.

## 2.2 Activity Cards.

(a) Issuance of Activity Cards. Ownership of each Lot shall entitle the Owner thereof to receive a maximum of two (2) activity or use privilege cards if such Owner complies with Section 2.3 (Age Restriction) and other obligations of the Owner under the Governing Documents. The cards for each Lot shall be renewed by the Association without charge, for such term and at such periods as shall be determined by the Board, provided that the Owner continues to comply with the obligations of the Owner under the Governing Documents, including, without limitation, payment of all assessments and other charges due to the Association. The Board may establish policies, limits and charges with regard to the issuance of additional cards and guest privilege cards.

(b) Assignment of Activity Cards. Subject to any rules and regulations establishing reasonable procedures and policies, any Owner may assign such Owner's right to receive activity or use privilege cards to residents of such Owner's Dwelling Unit; provided such residents are occupying such Dwelling Unit in compliance with Section 2.3 and other provisions of this Declaration. An Owner who leases such Owner's Lot shall be deemed to have assigned such rights to the lessee of such Lot, unless (i) the Board adopts rules and regulations permitting Owners to reserve such rights and (ii) such Owner provides the Board with written notice of such reservation which is consistent with the rules and regulations of the Board. If an Owner owns more than one (1) Lot, the Owner may request that additional cards be issued for the additional Lot(s), but any additional cards issued shall not be transferred, provided to, or used by anyone other than residents occupying Dwelling Units on Lots of such Owner in compliance with

Section 2.3. Any Owner may reassign the right to receive activity or use privilege cards by providing written notice to the Association of such reassignment and surrendering to the Association the previously assigned cards.

### 2.3 Age Restriction.

(a) General Rule. Sun City Hilton Head is intended to provide housing primarily for persons 55 years of age or older. The Properties shall be operated as an age restricted community in compliance with all applicable State and Federal laws. No person under 19 years of age shall reside in any Dwelling Unit for more than 90 days in any calendar year. Subject to the rights of Declarant with respect to designated Lots as described below, each Dwelling Unit, if occupied, shall be occupied by at least one individual 55 years of age or older (“Qualifying Occupant”).

(b) Compliance with Applicable Law. The Properties shall be operated as an age restricted community in compliance with all applicable State and Federal laws. In the event that any Qualifying Occupant dies or otherwise ceases to reside in the Dwelling Unit, such person’s co-habitants may own or occupy a Dwelling Unit and exercise all rights granted to occupants in this Declaration, including, but not limited to, those rights specified in Section 2.1, to the extent permitted by applicable State and Federal laws regarding age restricted communities; provided that at no time shall less than 80% of the Lots subject to this Declaration be occupied by single families where at least one member of the family is a Qualifying Occupant. The Board may establish policies and procedures from time to time as necessary to maintain its status as an age restricted community under State and Federal law.

(c) Limited Exception for Declarant. Notwithstanding the above, Declarant, and only Declarant, may sell or lease Lots in Neighborhoods it designates to Persons between the ages of 50 and 55, inclusive, and such Lots may be occupied by such Persons as Qualifying Occupants. Declarant’s rights under this paragraph are limited by the requirement that, at all times, at least 80% of the Dwelling Units within the Properties shall be occupied by at least one Person 55 years of age or older, it being Declarant’s intention that Sun City Hilton Head comply with all applicable state and federal Laws permitting the Properties to be developed and operated as an age-restricted community. Declarant shall designate those Neighborhoods within which the rights described in this paragraph exist in the Supplemental Declaration, or an amendment thereto, submitting such Property to the Declaration prior to the sale of any Lot in the Neighborhood to a Home Owner.

### 2.3 Exclusive Common Area.

(a) Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of Lots within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul de sacs, lakes, ponds, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed as a

Neighborhood Assessment against the Owners of Lots in those Neighborhoods to which the Exclusive Common Area is assigned.

(b) Exclusive Common Area shall be designated and the exclusive use thereof assigned in the deed conveying the Common Area to the Association or a the plat of survey relating to such Common Area. No such assignment shall preclude the Declarant from later reassigning and/or assigning use of the same Exclusive Common Area to additional Lots and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of Neighborhood Representatives representing a majority of the total Class "A" votes of the Association. As long as the Declarant owns any portion of the Properties or has the right to subject additional property pursuant to Section 9.1, any such assignment or reassignment shall also require the Declarant's consent.

(c) The Association may, upon approval by a majority vote of the Owners within such Neighborhood(s), permit Owners of Lots in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

### **ARTICLE III: ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS**

3.1 Function of Association; Rules and Regulations. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules and regulations regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents.

#### 3.2 Membership; New Member Fee; Notice of Title Transfer.

(a) Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established under Section 2.1, and the restrictions on voting set forth in Section 3.4 and in the Bylaws, 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 a corporation, partnership, limited liability company, trust or other legal entity may be exercised by any officer, director, partner, member, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

(b) New Member Fee; When Payable; By Whom. In addition to the administrative or transfer fee collected to cover administrative costs to the Association incurred relating to a lease or transfer, the Association shall collect a New Member Fee upon each transfer

of title to a Lot, other than exempt transfers as set forth herein in subsection (c), below. The New Member Fee (i) shall be paid by the grantor of title to the Lot unless the grantor and grantee agree in writing that that the New Member Fee shall be paid by the grantee, (ii) shall be payable at the closing of the transfer of title, and (iii) and, if unpaid at closing, shall be deemed a Benefitted Assessment secured by the Association's lien for assessments.

(c) Exemptions from New Member Fee. The following transfers of title to a Lot shall be exempt from the New Member Fee:

(i) By an Owner or Owners who had title as of February 28, 2007 (the date of the Fourth Amendment to the Declaration imposing the New Member Fee);

(ii) By or to the Declarant;

(iii) By a builder or developer holding title solely for purposes of development and resale;

(iv) By a co-Owner to any Person who was a co-Owner of such Lot as of February 28, 2007;

(v) To an Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(vi) To an entity wholly owned by the grantor of title or to a family trust created by such grantor for the direct benefit of the grantor and/or his or her spouse and/or heirs; provided, upon any subsequent transfer of an ownership interest in such entity, a New Member Fee shall be payable;

(vii) To an institutional lender as security for the performance of an obligation pursuant to a Mortgage; or

(viii) To any Owner separately required to pay a comparable New Member Fee pursuant to a recorded Supplemental Declaration on the Lot.

(d) Amount of New Member Fees. The New Member Fee shall equal one third (1/3) of one percent (1.0%) of the Gross Selling Price of the Lot, including all improvements, upgrades and premiums. The Gross Selling Price shall be the total cost to the transferee of title, including any portion of such cost funded by a lender, but excluding any transfer taxes or title fees payable by the transferee which are imposed by either Beaufort or Jasper County, if any.

(e) Use of New Member Fees. New Member Fees shall be used for purposes deemed by the Board to be beneficial in order to meet the general operating needs of the Association. By way of example and not limitation, New Member Fees may be used to assist the Association or one or more tax-exempt entities designated by the Board in funding operating or maintenance costs for recreational facilities, common areas, or open space preservation; or for other operating needs of the Association.



(f) Notice of Pending Transfer of Title. Each Owner transferring title to a Lot shall notify the Association's secretary or designee not less than seven (7) days prior to the scheduled closing. Such notice shall include the street address of the Lot being transferred, the name of the grantor and grantee, the proposed date of title transfer and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Association, notwithstanding the transfer of title. The Association may require the payment of a reasonable administration or registration fee by the transferee.

3.3 Voting; Classes of Membership. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A" Members. Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 3.2. There shall be only one vote per Lot.

(b) Class "B" Member. The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to disapprove actions of the Board and committees, shall cease and be converted to Class "A" membership upon the earlier of the following:

(i) After 100% of the total number of Lots proposed by the Master Plan have certificates of occupancy issued thereon and such Lots have been conveyed to Home Owners;

(ii) December 31, 2020; provided that, in the event the Declarant annexes additional property pursuant to Section 9.1 at any time after December 31, 2015, this date shall automatically be extended for additional three (3) year periods for every 500 acres of property annexed, or any fraction thereof; or

(iii) When the Declarant so determines; provided, however, that such determination shall be evidenced by a written statement signed by the Declarant, evidencing the intent of the Declarant to permanently terminate the Class "B" Membership effective as of the date set forth in such statement, and such statement is recorded, by Declarant or with Declarant's express written consent, in the Register of Deeds for Beaufort County."

(c) Conversion to Class "A" Member. From and after the date the Class "B" membership ceases, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Lot it owns.

3.4 Exercise of Voting Rights.

(a) One Vote Per Lot. Except as otherwise specified in this Declaration or the Bylaws or otherwise required by law, the vote for each Lot owned by a Class "A" Member shall be exercised only by the Owner.

(b) Determining Who Has Right to Vote for Owner. The Bylaws shall define the procedure for determining which Person has the right to vote for an Owner.

(c) Votes by Neighborhood. Unless otherwise expressly stated herein, if the vote is on behalf of a specific Neighborhood, the Neighborhood Representative for such Neighborhood shall exercise the voting rights of such Neighborhood.

### 3.5 Neighborhoods, Neighborhood Representatives.

(a) Neighborhoods. Every Lot shall be located within a Neighborhood. The Lots within a particular Neighborhood may be subject to additional covenants. The Owners of Lots within any Neighborhood may elect a Neighborhood Committee, as described in the Bylaws, to represent the interests of such Owners.

(b) Special Services for Neighborhood. Any Neighborhood may, upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of Lots within the Neighborhood, request the Association to provide an increased level of service or special services for the benefit of Lots in such Neighborhood, the costs of which shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Article X.

(c) Assignment to Neighborhood. Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to an existing or newly created Neighborhood by name. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to reassign property to a Neighborhood, redesignate Neighborhood boundaries or combine two or more existing Neighborhoods. Thereafter, the Association may amend this Declaration or any Supplemental Declaration to reassign and/or redesignate Neighborhood boundaries; provided the Association may not combine two or more Neighborhoods without the consent of Owners of a majority of the Lots in the affected Neighborhoods.

(d) Election of Neighborhood Representative.

(i) One Neighborhood Representative and one Alternate Neighborhood Representative shall be elected in a meeting at which a quorum is present from each Neighborhood by a majority of the Voting Members entitled to cast Class "A" votes attributable to the lots in the Neighborhood in accordance with procedures adopted by the Board of Directors. The presence, in person or by proxy, of Voting Members representing at least twenty percent (20%) of the total Class "A" votes attributable to Lots in the Neighborhood shall constitute a quorum at any Neighborhood meeting. Any vote that can occur at a meeting may also be by written or electronic ballot without a meeting in accordance with procedures established by the Board.

(ii) Each Class "A Voting Member" shall be entitled to cast one equal vote for each Lot which it owns in the Neighborhood for each position. The candidate for each position who receives the greatest number of votes shall be elected to serve a term of two years. The Board shall establish procedures for nomination of Neighborhood

Representatives and all nominees shall complete such training and committee or other service requirements as established by the Board.

(e) Removal of Neighborhood Representative. Any Neighborhood Representative may be removed, with or without cause, upon the vote or written petition of Owners of Lots within the Neighborhood which such Neighborhood Representative represents following the same procedures by which such Neighborhood Representative was elected.

(f) Responsibilities of Neighborhood Representative. Except as otherwise specifically provided in the Governing Documents, each Neighborhood Representative shall chair the Neighborhood Committee and cast all votes which it represents as it, in its discretion, deems appropriate; provided, however, if a Neighborhood Representative represents a Neighborhood in which the Declarant owns one or more Lots, the Declarant may direct in writing to such Neighborhood Representative the manner in which its votes for such Lots are to be cast by the Neighborhood Representative. All other votes may be cast as the Neighborhood Representative deems appropriate in its sole discretion. The Board may adopt rules and regulations establishing procedures for Neighborhood meetings, electing Neighborhood Representatives, and polling members.

(g) Alternate Representative. An Alternate Neighborhood Representative shall act in the absence of the Neighborhood Representative for which it is the designated alternate. Alternate Neighborhood Representatives may attend meetings of the Neighborhood Representatives, but shall not be entitled to vote except in the absence of the Neighborhood Representative for which it is the designated alternate.

#### **ARTICLE IV: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant or any Person approved in writing by Declarant may convey to the Association improved or unimproved real estate located within the Properties, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including, but not limited to, restrictions governing the use of such property.

#### 4.2 Enforcement of Governing Documents.

(a) Sanctioning Bodies; Types of Sanctions. The Board may impose sanctions for violations of the Governing Documents. The Covenants Committee, the Modifications Committee and other Association agents authorized in writing by the Board may also impose sanctions for violation of the applicable Governing Documents to the extent expressly authorized by this Declaration or authorized in writing by the Board. The Board may identify specific Governing Documents for which a designated Association agent may impose sanctions, may limit the type and extent of the sanctions such Association agent may impose and enforce, and may define the applicable procedure for imposing and enforcing such sanctions. Sanctions may include, without limitation:

(i) imposing reasonable monetary fines which, if unpaid in a timely manner, shall constitute a lien upon the Lot of the violator and a personal obligation of the Owner. If an occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Association agent imposing the fine, then the Owner shall be responsible for paying the fine;

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

(iii) suspending any Person's right to use any recreational facilities within the Common Area or use activity or use privilege cards issued by the Association; provided, however, nothing herein shall authorize the Board to limit ingress and egress by an Owner to or from the Lot of such Owner along recorded street rights of way;

(iv) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association; and

(v) levying Benefitted Assessments to cover costs incurred by the Association pursuant to Section 10.7.

(b) Remedies Cumulative; Attorneys' Fees. All remedies and sanctions authorized in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association is the prevailing party against an Owner (other than against the Declarant), it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs reasonably incurred in such action. The amount of such attorneys' fees and costs may be assessed as a Benefitted Assessment against the Lot(s) involved in the action.

(c) Waiver of Enforcement by Board. The Association shall not be obligated to take action to enforce any provision of the Governing Documents which the Board reasonably determines is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of any right of the Association to enforce such provision under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

4.3 Implied Rights; Board Authority. The Association may exercise any right or privilege expressly given to it by the Governing Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. The Association may, but shall not be obligated to, maintain or support activities within the Properties designed to promote the health, safety and welfare of Owners and occupants of any Lot. Except as otherwise specifically provided in this Declaration, the Bylaws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.4 Governmental Interests. So long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, the Declarant may designate sites within the Properties for fire, police and utility facilities, and parks, and other public facilities in accordance with the Master Plan and applicable laws. The sites may include Common Areas if otherwise permitted by the Master Plan.

4.5 Dedication of Common Areas. The Association may dedicate or grant easements over portions of the Common Areas to any local, state, or federal governmental entity, or any utility company..

4.6 Disclaimers of Liability.

(a) Notwithstanding anything contained within the Governing Documents, neither the Association, the Board, the management company of the Association, the Declarant, nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Properties, including all recreational facilities, if any.

(b) Neither the Association, the Board, the management company of the Association, the Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub stations adjacent to, near, over, or on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub stations and further acknowledges that the Association, the Board, the management company of the Association, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub stations.

(c) Each Owner and occupant, and each tenant, guest and invitee of any Owner or occupant acknowledges that the Properties are located in the vicinity of wetland and swamp areas and that such areas may contain an abundance of wildlife, including, without limitation, deer, skunks, opossums, snakes, alligators, reptiles, rodents and pests. Neither the Association, the Board, the management company of the Association, the Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant (i) assumes all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and (ii) acknowledges that the Association, the Board, the management company of the Association, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

(d) No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the Board, the management company of the Association, the Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

#### 4.7 Security; No Guarantee of Security.

(a) The Association may maintain or support certain activities within the Properties intended to make the Properties safer than they otherwise might be; provided, however, that the Association shall not be obligated to maintain or support such activities..

(b) Neither the Association, the management company of the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, the management company of the Association, the Declarant, nor any successor Declarant shall be held liable for any loss or damage for failure to provide adequate security or ineffectiveness of security measures undertaken.

(c) All Owners and occupants of any Lot, and all tenants, guests, and invitees of Owners or occupants, acknowledge that the Association, the Board, the management company of the Association, the Declarant, any successor Declarant, and the Covenants and Modifications Committees do not represent or warrant that any entry gate, patrolling of the Properties, neighborhood watch group or volunteer security patrol, or any security system designated by or installed according to guidelines established by the Declarant or the Association may not be compromised or circumvented; nor that any entry gate, patrolling of the Properties, neighborhood watch group or volunteer security patrol, or any security systems will prevent loss by burglary, theft, hold up, or otherwise; nor that entry gate, patrolling of the Properties, neighborhood watch group or volunteer security patrol, or any security systems will in all cases provide the detection or protection for which the system is designed or intended.

(d) All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, the management company of the Association, the Declarant, or any successor declarant are not insurers.

(e) All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, the management company of the Association, the Declarant, or any successor declarant have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Properties, neighborhood watch group or volunteer security patrol, or any security systems recommended or installed or any security measures undertaken within the Properties.

4.8 Association Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be

authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. Except as provided in Section 4.9, the Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

#### 4.9 Change of Use or Conveyance of Common Areas.

(a) During Class "B" Control Period. During the Class "B" Control Period, the Board, without the approval or consent of any Member or other Person (other than the Declarant if Declarant then owns any portion of the Properties or has the right to annex property pursuant to Section 9.1) may, upon adoption of a resolution stating that, in the Board's opinion a service provided by the Association or the then present use of a designated part of the Common Areas is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, terminate such service or sell, exchange, convey or abandon such Common Area, or change the use thereof (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use); provided that any such new use (i) shall be for the benefit of the Owners, (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas, and (iii) shall be consistent with the then effective Master Plan.

(b) After Class "B" Control Period. After the Class "B" Control Period, the Board may take an action authorized by (a), above, provided that such action shall also be (i) approved by Neighborhood Representatives representing a majority of the Class "A" votes cast at a meeting of Neighborhood Representatives duly called for such purpose, or by ballot in lieu of a meeting, and (ii) if Declarant then owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, approved in writing by the Declarant. If, however, the Board determines, and a resolution of the Board states that any transaction involving the disposition or exchange of Common Area will not have an adverse effect on the Association and the Owners, the Board may, in lieu of calling a meeting pursuant to the preceding sentence, give notice to all Owners of the proposed transaction and of any right to object thereto and the Board will have no obligation to call a meeting of the Neighborhood Representatives except upon receipt of a petition of Neighborhood Representatives representing at least twenty (20%) percent of the Class "A" votes. If no such petition is received within 30 days after the giving of such notice, the transaction shall be deemed approved by the Neighborhood Representatives and the meeting of the Neighborhood Representatives shall not be necessary.

4.10 View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Neither the Declarant nor the Association shall have the

obligation to prune or thin trees or other landscaping except as set forth in Article V. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.11 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including but not limited to organizations that provide facilities or services designed to meet the physical or social needs of older persons, for the benefit of the Properties, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

## **ARTICLE V: MAINTENANCE**

5.1 Area of Common Responsibility. Except as otherwise expressly provided in this Declaration, the Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all Common Area;
- (b) all private streets, including any repairs thereto, situated in the Common Area;
- (c) all walls and fences constructed by Declarant on any Lots which serve as perimeter walls for the Properties or which separate any Lot from Common Area or a Private Amenity (allocation of responsibility for the maintenance and repair of party walls and party fences is set forth in Section 5.10);
- (d) to the extent required by law, or required by encroachment or other permits between the applicable governmental entity and the Association or the Declarant, or authorized by the Board pursuant to such permits, landscaping, sidewalks, street lights, irrigation systems, and signage within public rights of way abutting the Properties, including, but not limited, to Highways 170 and 278;
- (e) to the extent required by any easement, or authorized by the Board pursuant to any easement, landscaping and other flora within any public utility easements and scenic easements within the Common Area;
- (f) any additional property included within the Area of Common Responsibility as may be required by the Governing Documents, any plat of any portion of the Properties approved by the Declarant, or any contract or agreement for maintenance thereof entered into by the Association; and



(g) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from the Declarant to the Association, until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

5.2 Wildlife. The Association shall also have the right and power, but not the obligation, to take such actions, in accordance with appropriate law, and adopt such rules and regulations as may be necessary for control, relocation, management, and extermination of wildlife, including but not limited to, deer, pigs, skunks, opossums, snakes, alligators, reptiles, rodents, and pests, within the Area of Common Responsibility.

5.3 Wetlands. Areas within the Properties designated as "wetlands" on a recorded plat or in a recorded covenant shall be maintained in accordance with the recorded restrictions or covenants relating to such wetlands. Unless expressly authorized by the Board or required by law, such areas shall be generally left in a natural state and no maintenance by the Association shall be required unless the Board determines that a condition in the wetland has had or may have a material adverse impact on Properties outside the wetland. If approved by the Board, the Association may maintain drainage ditches, retention and detention structures, boardwalks, fishing docks, and crab docks over, around, and in such wetlands. Notwithstanding anything contained in this paragraph, the Declarant, its successors, assigns, affiliates and designees may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

5.4 Neighborhood Areas. The Association may assume maintenance responsibility for property within any Neighborhood in addition to any property which the Association is obligated to maintain by this Declaration or any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of such maintenance shall be assessed against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.5 Other Property. The Association may also maintain and improve other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

5.6 Maintenance a Common Expense. Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment against the Lots within the Neighborhood(s) to which the Exclusive Common Areas are assigned.

5.7 Owner's Maintenance Responsibility.

(a) Each Owner shall maintain such Owner's Lot, Dwelling Unit, and all other structures, parking areas, landscaping, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable Design Guidelines and covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. Unless otherwise provided in a Supplemental Declaration or other declaration of covenants applicable to such Lot, or otherwise approved in writing by the Board, and for the purpose of this section only, a "Lot" shall include the area located within the road right-of-way adjacent to the Lot and between the perimeter boundary of the Dwelling Unit and the closest edge of the paved portion of the roadway located thereon (the "Lot Border"); provided, however, the maintenance responsibility of the Owner within the Lot Border shall be limited to grounds cleanup, mowing of grass, weeding, landscaping, pruning of shrubs and trees, mailboxes, and driveway connection.

(b) In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required because of what is reasonably perceived to be an emergency.

#### 5.8 Neighborhood's Responsibility.

(a) Upon Board resolution, the Owners of Lots within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right of way and open space between the Lots within the Neighborhood and adjacent public roads and private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

(b) All maintenance required under this Declaration or any additional covenants or agreements shall be performed consistent with the Community-Wide Standard. If any Neighborhood fails to perform such maintenance, the Association may perform it and assess the costs against all Lots within such Neighborhood as provided in Section 10.7.

#### 5.9 Standard of Performance.

(a) Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard and applicable Design Guidelines. All maintenance shall be performed in a manner consistent with the Community-Wide Standard, applicable Design Guidelines, and all applicable covenants, as determined by the Board.

(b) Portions of the Properties are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Properties. The Board may establish a higher Community-Wide Standard for such areas and require additional maintenance for such areas to reflect the nature of such property.

(c) Notwithstanding anything to the contrary contained herein, neither the Association nor any Owner, shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own (except for a Lot Owner in the Lot Border as defined in Section 5.7[a]), and, if owned (or, for a Lot Owner, if in the Lot Border), only to the extent that, such Person has been negligent in the performance of its maintenance responsibilities.

#### 5.10 Party Walls and Party Fences.

(a) Definition. Each wall and fence built as a part of the original construction on the Lots and meeting the following criteria shall constitute a "party wall" or "party fence" (herein referred to as "party structures"):

(i) any part of which is built upon or straddling the boundary line between two adjoining Lots; or

(ii) which is constructed within four feet of the boundary line between adjoining Lots, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Lot; or

(iii) which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots, regardless of whether constructed wholly within the boundaries of one Lot.

(b) Ownership. The Owners of the property served by a party structure (the "Adjoining Owners") shall own that portion of the party structure lying within the boundaries of their respective Lots and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the adjoining Lot. Each Adjoining Owner shall be responsible for maintaining a property insurance policy on that portion of any party structure lying within the boundaries of such Owner's Lot, as more particularly provided in Section 6.3, and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

(c) Repair and Maintenance. The responsibility for the repair and maintenance of party structures and the reasonable cost thereof shall be shared equally by the Adjoining Owners. Adjoining Owners shall provide reasonable access to such party structures for the purposes of repair or maintenance. To the extent damage to a party structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, any Adjoining Owner may restore it. If other Adjoining Owners thereafter use the party structure, they shall contribute to the restoration cost in equal shares without prejudice to any Owners' right to larger contributions from other users under any rule of law. Any Owner's right to contribution from another Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE VI: INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, if reasonably available for reasonable premiums, the following types of insurance:

(a) Blanket property insurance covering risks of physical loss on an "all-risk" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at a reasonable cost, then "broad form named perils" coverage may be substituted. In addition, the Association shall, if so specified in a Supplemental Declaration applicable to a particular Neighborhood, obtain and continue in effect property insurance covering risks of physical loss on an "all risk" basis for all insurable improvements in the Neighborhood. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. Costs of property insurance obtained by the Association on the behalf of a Neighborhood shall be charged to the Owners of Lots within the benefitted Neighborhood as a Neighborhood Assessment;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least \$1,000,000.00 per occurrence and at least \$2,000,000.00 aggregate occurrences, with respect to bodily injury, personal injury, and property damage;

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

(d) Directors and officers liability insurance or equivalent association liability insurance;

(e) Commercial crime insurance, including employee fidelity insurance, in an amount determined by its best business judgment, which, for employee fidelity insurance shall not be less than one sixth of the annual Base Assessments on all Lots plus reserves typically on hand. Such commercial crime insurance shall cover funds held by the Association's management company, unless such management company's insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(f) Such additional insurance, including but not limited to flood, earthquake and hurricane insurance, as the Board in its best business judgment determines advisable.

6.2 Private Amenity Insurance. The Association shall have no insurance responsibility for any portion of any Private Amenity.

### 6.3 Association Policy Requirements.

(a) **Periodic Review.** Prior to the renewal of any insurance policy and at least annually, the Association shall arrange for a review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Beaufort and Jasper Counties, South Carolina, area.

(b) **Deductibles.** The policies may contain a reasonable deductible as determined by the Board and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Section 10.7.

(c) **General Policy Criteria.** To the extent consistent with the conditions set forth in the first sentence of Section 6.1, all insurance coverage obtained by the Board shall:

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

(ii) Be written in the name of the Association. Policies on the Common Area shall be for the benefit of the Association and its Members. Insurance coverage secured on behalf of a Neighborhood shall be for the benefit of the Owners of Lots within the Neighborhood, and their Mortgagees, as their interests may appear;

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

(iv) Include an agreed amount endorsement if the policy contains a co insurance clause; and

(v) Include replacement cost coverage.

(vi) Include a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager and the Owners;

(vii) Include a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

- (viii) Include an endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners;
- (ix) Include an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non renewal;
- (x) Include a cross liability provision;
- (xi) Acknowledge the exclusive authority of the Board to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and
- (xii) Include a provision identifying the Lot Owners as additional insureds under the policy.

6.4 Premiums a Common Expense. Except as otherwise provided in Section 6.1 with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board reasonably determines that other treatment of the premiums is more appropriate.

6.5 Owner's Insurance. Each Owner shall carry property insurance for the full insurable replacement cost on its Lot(s), less a reasonable deductible, unless either the Neighborhood in which the Lot is located or the Association carries such insurance (which they are not obligated to do hereunder). Such property insurance shall include windstorm and hail coverage, and, if full insurable replacement cost is not reasonably available for such coverage, actual cash value may be substituted.

6.6 Action by Owner After Damage. In the event of damage to or destruction of the Dwelling Unit or any other structures on an Owner's Lot, such Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community Wide Standard and applicable Design Guidelines. The Owner shall pay any costs which are not covered by insurance proceeds.

6.7 Additional Covenants. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and the standards for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

6.8 Damage and Destruction.

(a) Filing Association Claims. Promptly after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain a reliable and detailed estimate of the cost of repair or reconstruction. Repair or reconstruction, as used in this Section, means 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.

(b) Repair of Damage. Any damage to or destruction of the Common Area or the common property of any Neighborhood shall be repaired or reconstructed unless the Board and the Declarant, as long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, decides not to repair or reconstruct after receipt of any estimate of the cost of repair or reconstruction desired by the Board or Declarant. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood shall be repaired or reconstructed.

(c) Action If No Repair. If determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.9 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction of Common Area or the common property of any Neighborhood, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account for disbursement as may be determined by the Board of Directors.

6.10 Inadequate Insurance Proceeds for Needed Repair. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may levy Benefitted Assessments adequate to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage.

## **ARTICLE VII: NO PARTITION OF COMMON AREA**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

## **ARTICLE VIII: CONDEMNATION**

8.1 Notice of Condemnation of Common Area. Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, reasonable efforts shall be made to notify Owners thereof in accordance with Section 19.10.. The Board may convey Common Area under threat of condemnation only if approved in writing by (i) the Board and (ii) the Declarant. as long as Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1.

8.2 Condemnation Awards. The award made for a taking shall be payable to the Association as trustee for all Owners and shall be disbursed as follows:

(a) Condemnation of Improvements. If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless the Board and the Declarant, so long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, decides not to repair or reconstruct after receipt of any estimate of the cost of restoration or replacement desired by the Board or Declarant. No Mortgagee shall have the right to participate in such determination.

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

## **ARTICLE IX: ANNEXATION AND WITHDRAWAL OF PROPERTY**

### 9.1 Annexation Without Approval of Membership.

(a) Until all property described in Exhibit "B" has been subjected to this Declaration or 30 years after recordation of this Declaration, whichever is earlier, Declarant may unilaterally subject to the provisions of this Declaration all or portions of the real property described in Exhibit "B".

(b) In addition, until 40 years after recordation of this Declaration, Declarant may unilaterally subject any Contiguous Property to the provisions of this Declaration.

(c) Declarant may transfer or assign this right to annex property, provided that (i) the transferee or assignee is the developer of at least a portion of the real property described in either Exhibits "A" or "B" or any Contiguous Property and (ii) such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" or any Contiguous Property in any manner whatsoever.

(d) Such annexation shall be accomplished by filing a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing of record of such Supplemental Declaration unless otherwise provided therein.

### 9.2 Other Annexation With Approval of Membership.

(a) The Association or the Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Neighborhood Representatives representing at least two-thirds (2/3) of the total Class "A" votes of the Association represented at a meeting duly called for such purpose, and the



consent of the Declarant so long as Declarant owns property subject to this Declaration or has the right to annex property pursuant to Section 9.1.

(b) Such annexation shall be accomplished by filing a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, the owner of the annexed property, and, if applicable, the Declarant. Any such annexation shall be effective upon the filing of record of such Supplemental Declaration unless otherwise provided therein.

9.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

9.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed of record either concurrently with or after the annexation of the subject property and shall require the written consent of the Declarant and the owner(s) of such property, if other than the Declarant.

9.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1.

## **ARTICLE X: ASSESSMENTS**

### 10.1 Creation of Assessments.

(a) Types of Assessments. The Association may levy assessments against each Lot as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Lots within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.6; and (d) Benefitted Assessments as described in Section 10.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments. (Also see "New Member Fees" in Section 3.2, above.)

(b) Liability for Assessments; Mortgagees All assessments, together with interest from the due date of such assessment at a rate determined by the Association (not to

exceed the highest rate allowed by South Carolina law), fines, fees, late charges, and costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is levied until paid, as more particularly provided in Section 10.9. Each such assessment, together with interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. To the extent required by South Carolina Code Section 27-31-210 (as it may be amended from time to time), if a mortgagee of any mortgage of record or other purchaser of a Lot obtains title at a foreclosure sale, the Person acquiring title shall not be liable for assessments allocable to the Lot that accrued after the date of recording of the mortgage and prior to the acquisition of title at the foreclosure sale.

(c) **Payment of Assessments.** Assessments shall be paid in such manner and by such dates as the Board may establish. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

(d) **Statements Regarding Assessment Status.** The Association shall, upon request by an Owner, furnish to any Owner a certificate in writing signed by an officer or expressly authorized agent of the Association setting forth whether assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(e) **No Exemption.** No Owner may exempt such Owner from liability for assessments by nonuse of Common Area, abandonment of such Owner's Lot or Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by the Association or Board.

## 10.2 Declarant's Obligation for Assessments.

(a) **Declarant's Option.** During the Class "B" Control Period, Declarant may annually elect either to pay assessments on all of its unsold Lots or pay the shortage for such fiscal year.

(b) **Shortage Defined.** The "shortage" shall be the difference between:

(i) the amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all other Lots, use fees, advances made by Declarant, and income from all other sources, and

(ii) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds. Calculation of the shortage shall be performed on a cash basis of accounting. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

(c) Declarant Services. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

### 10.3 Computation of Base Assessment.

(a) Preparing Budget. Not less than 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget shall include a line item for the establishment of a reserve fund in accordance with a budget separately prepared as provided in Section 10.5, but shall not include expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Neighborhood Representatives representing a majority of the total Class "A" votes of the Association.

(b) Determining Assessment. The Base Assessment shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Section 10.8 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

(c) Effective Date of Budget; Notice. The budget shall become effective unless disapproved (i) at a meeting by Neighborhood Representatives representing at least a majority of the total Class "A" votes of the Association, and (ii) as long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on written petition of the Neighborhood Representatives as provided for special meetings in the Bylaws, which petition must be presented to the Board within 30 days after notice of the assessments. Notice of assessments shall be posted in a prominent place within the Properties, or given in the manner set forth in Section 19.10, or given by any other reasonable method. If the proposed budget is disapproved or the Board fails for any reason to determine the

budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

(d) **Maximum Increase in Base Assessment.** Notwithstanding any provision to the contrary, the Board may not impose a Base Assessment that is more than 20% greater than the Base Assessment for the immediately preceding fiscal year without a majority vote of a quorum of Neighborhood Representatives, which vote may be at a meeting of the Association or by written ballot. This limitation shall not apply to Neighborhood Assessments, Special Assessments, Benefitted Assessments, or any user or membership fees imposed by the Association.

(e) **Reduction in Base Assessment.** The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.2), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be disclosed as a line item in the Common Expense budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

#### 10.4 Computation of Neighborhood Assessments.

(a) **Preparing Neighborhood Budget.** At least 30 days before the beginning of each fiscal year, the Board shall prepare a separate budget for each Neighborhood covering the estimated Neighborhood Expenses, if any, expected to be incurred on behalf of such Neighborhood during the coming year. The Board shall be entitled to set such budget only to the extent that (i) this Declaration, any Supplemental Declaration, or the Bylaws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment, or (ii) the Association expects to incur expenses to provide additional services for a Neighborhood. Any Neighborhood may request that additional services or an increased level of services be provided by the Association, and in such case, any approved additional costs shall be added to such budget. Such budget shall include a reserve contribution establishing a fund for repair and replacement of items maintained as a Neighborhood Expense, if any, within the Neighborhood.

(b) **Obligation for Neighborhood Assessments.** Neighborhood Expenses shall be levied as a Neighborhood Assessment against all Lots within the benefitted Neighborhood and shall be allocated equally among those Lots. If specified in the Supplemental Declaration applicable to such Neighborhood or if directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of Dwelling Units or other structures, insurance on Dwelling Units or other structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Lots in proportion to the benefit received. Such proportion shall be specified in the Supplemental Declaration applicable to such Neighborhood, or if not so specified, shall be approved by a majority of the Owners within the Neighborhood, and Declarant, as long as Declarant owns any property within such Neighborhood.

(c) Effective Date. Neighborhood budgets shall become effective unless disapproved by a majority vote of the Owners of Lots in the Neighborhood for which the Neighborhood budget applies. There shall be no obligation to call a meeting or written ballot for the purpose of considering the Neighborhood budget except on written petition of Owners representing at least 10% of the Class "A" votes in such Neighborhood, which petition must be presented to the Board within 30 days after notice of the Neighborhood Assessments. Notice of Neighborhood Assessment shall be provided to Owners in the Neighborhood in the manner set forth in Section 19.10; and provided, further, the right to disapprove shall apply only to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood. If the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine the Neighborhood budget for any year, then and until such time as such budget shall have been determined as provided herein, the Neighborhood budget in effect for the immediately preceding year shall continue for the current year.

#### 10.5 Reserve Budget.

(a) Preparing Reserve Budget The Board shall prepare, on an annual basis, reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in the Base Assessments and Neighborhood Assessments reserve contributions in amounts estimated to be sufficient to meet these projected needs, if any.

(b) Use of Reserve Funds. The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes and for each Neighborhood. So long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, neither the Association nor the Board shall adopt, modify, limit or expand such policies without the Declarant's prior written consent.

10.6 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if for Common Expenses, or against the Lots within any Neighborhood, if for Neighborhood Expenses. Such Special Assessments shall become effective unless (a) disapproved at a meeting of the Owners representing at least a majority of the total Class "A" votes allocated to Lots which will be subject to such Special Assessment, or (b) disapproved by the Declarant, as long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1. There shall be no obligation to call a meeting for the purpose of considering Special Assessments except on written petition of the Neighborhood Representatives as provided for special meetings in the Bylaws, which petition must be presented to the Board within 30 days after notice of the Special Assessment. Notice of Special Assessment shall be in the manner set forth in Section 19.10. 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.

#### 10.7 Benefitted Assessments.

(a) Specific Lots. The Board may levy Benefitted Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

(i) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(ii) to cover costs incurred in bringing the Lot into compliance with the provisions of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees, or guests. The Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefitted Assessment under this subsection; provided that no notice or hearing shall be required (a) if the Board reasonably determines that prompt imposition of the Benefitted Assessment is required in order to avoid or decrease possible injury to persons or damage to property, (b) for any Benefitted Assessment that does not exceed two hundred fifty dollars (\$250.00) for a single occurrence (or such greater amount as may be expressly approved in writing by the Board), or (c) for any matter identified in Section 17.2 of this Declaration as not constituting a "Claim".

(b) Lots Within Specific Neighborhood. The Association may also levy a Benefitted Assessment against the Lots within a Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives the Neighborhood Representative from such Neighborhood prior written notice and an opportunity for a hearing before levying any such assessment (but subject to the same exceptions as set forth in subsection 10.7(a)(ii), above).

10.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the date the Lot is made subject to this Declaration, or (b) the date the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base and Neighborhood Assessments against each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

#### 10.9 Lien for Assessments.

(a) Creation of Lien. Failure to pay any assessments authorized in this Article shall create a lien against the Lot against which they are levied until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of costs of the Association, including any fees, fines, interest at the maximum rate then allowed by law, charges, reasonable attorneys' fees, filing fees and court costs, and administrative costs. Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of a first Mortgage of record made in good faith and for value, as set forth in Section 10.1(b), above. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure. The lien shall be in addition to the right of the Association to pursue a claim against the Owner personally.

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

(c) Effect of Transfer or Foreclosure of Mortgage. The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to acquisition of title by the Mortgagee. . Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 10.8, including such acquirer, its successors and assigns.

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

10.11 Exempt Property. The following property subject to this Declaration shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

(a) all Common Area; (b) all property dedicated to and accepted by any governmental authority or public utility; and

(c) if approved by the Declarant and/or the Association, in their sole discretion, property owned by Persons exempt from income taxes under the Internal Revenue Code or South Carolina law if such property is used for purposes listed in the applicable Internal Revenue Code or South Carolina law provision. **ARCHITECTURAL AND DESIGN STANDARDS**

## 11.1 General.

(a) Compliance with Governing Documents. No improvements, additions or modifications (including, without limitation, staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Dwelling Unit, other structure or the Common Area (such as, without limitation, signs, antennae, clotheslines, playground equipment, pools, propane tanks, lighting, temporary structures, and artificial vegetation), planting or removal of landscaping materials, or installation or removal of an irrigation system shall take place except in compliance with this Article XI and the Governing Documents.

(b) Exception for Certain Interior Improvements. Any Owner may remodel, paint or redecorate the interior of structures, including the Dwelling Unit, on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to this Article and approval as set forth below.

(c) Exception for Certain Repainting or Rebuilding of Exterior Improvements. 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.

(d) Exception for Declarant and Common Area Improvements. This Article shall not apply to the activities of the Declarant or to improvements to the Common Area by or on behalf of the Association.

(e) Declarant Approval of Amendments to Article. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any Private Amenity or any land subject to this Declaration or subject to annexation to this Declaration.

## 11.2 Architectural and Design Review.

(a) New Construction. Until 100% of the Properties have been developed and conveyed to Home Owners, the Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for original construction within the Properties. There shall be no surrender of this right prior to that time except in a written instrument executed by Declarant and recorded in the Register of Deeds of Jasper County or Beaufort County, South Carolina. Upon the expiration or surrender of such right by the Declarant, such authority shall be assigned to the Modifications Committee.

(b) Modifications Committee; Fees, Deposits and Sanctions.

(i) Modifications Committee. The Board shall establish a Modifications Committee which shall consist of at least three, but not more than nine, persons who shall be appointed and shall serve at the discretion of the Board. The Modifications Committee shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Lots or containing Dwelling Units and the adjacent open space. The Declarant, or after the termination of the Class



B Control Period, the Board shall have the right to veto any action taken by the Modifications Committee which the Declarant or Board determines, in its sole discretion, to be inconsistent with the Design Guidelines.

(ii) Fees. The Modifications Committee may establish and charge reasonable fees (i) for review of applications pursuant to (b)(i), above, or (ii) to provide reasonable funds to offset possible costs to the Association for failure of an applicant or its agent to perform in accordance with the Design Guidelines or the approved application (such as, without limitation, fees for cleanup of debris created by the work). The Modifications Committee may require such fees to be paid in full prior to review of any application. Such fees may include the costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association 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 Association's annual operating budget as a Common Expense.

(iii) Deposits. The Modifications Committee may require the deposit of reasonable sums to provide funds to offset possible costs to the Association for failure of an applicant or its agent to perform in accordance with the Design Guidelines or the approved application (such as, without limitation, fees for cleanup of debris created by the work). The Modifications Committee may require such fees to be paid in full prior to commencement of the approved work. Any deposits remaining after the completion of the approved work shall be promptly refunded to the applicant or the applicant's designee.

(iv) Fines and Other Sanctions. The Modifications Committee may establish and impose a schedule of monetary fines and other sanctions authorized by Section 4.2 for failure of an applicant to perform in accordance with this Article, the Design Guidelines or the approved application; provided, however, such schedule shall be approved in writing by the Board.

### 11.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare Design Guidelines which shall apply to all construction activities within the Properties, except as provided in Section 11.1. The Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Properties or has a right to annex any property pursuant to Section 9.1, or until the Declarant assigns this authority to the Association in writing, which assignment shall be revocable by the Declarant until such time as the assignment is set forth in a written instrument executed by Declarant and recorded in the Register of Deeds of Jasper County or Beaufort County, South Carolina. After assignment, the Association, through its Board of Directors, shall have the authority to amend the Design Guidelines. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, intended use, the Master Plan, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular

concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Modifications Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(b) Amendments to Design Guidelines. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to construction or modifications previously approved if such approved construction or modification has commenced. After the Declarant no longer has authority to amend the Design Guidelines as set forth in subsection (a), there shall be no limitation on the scope of amendments to the Design Guidelines. The Declarant or, upon assignment, the Association, through its Board of Directors, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

(c) Availability of Design Guidelines. The Association shall make the Design Guidelines available to Owners and builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, such Design Guidelines may be recorded in the Register of Deeds, 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.

(d) Variances from Design Guidelines. All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the Modifications Committee unless the Modifications Committee has granted a variance in writing pursuant to Section 11.6. So long as the Modifications Committee has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

#### 11.4 Review of Plans and Specifications.

(a) Mandatory Review of Plans. No activities within the scope of Section 11.1 shall commence on any Lot until an application for approval of the proposed work has been submitted to and approved by the Modifications Committee. Such application shall be in the form required by the Modifications Committee and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor and other features of proposed construction, as applicable. The Design Guidelines shall set forth the procedure and any additional information for submission of the Plans.

(b) Review Considerations. In reviewing each submission, the Modifications Committee may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The Modifications Committee may require relocation of native plants

within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Lot as a condition of approval of any submission.

(c) Time for Review. The Reviewing Body shall, within the period specified in the Design Guidelines, advise, in writing, the party submitting the Plans, at the address specified by such party at the time of submission or such revised address as is subsequently provided in writing to the Modifications Committee (the "Current Address") of (i) the approval of the submitted Plans, or (ii) if not approved, the portions of disapproved Plans which are deemed by the Modifications Committee to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, with a brief summary of the reason for such finding (which may include the need for more information). If the Modifications Committee fails to provide such written notice within the period specified in the Design Guidelines, approval of the Plans shall be deemed to have been given.

(d) Notice to Applicant. Notice to the party submitting the Plans required by (c), above, shall be deemed to have been given when (i) such notice, addressed to the address of party submitting the Plans as set forth on the application, is deposited, postage prepaid, with the U.S. Postal Service and sent by United States First Class mail, in which event delivery shall be deemed to occur three (3) days after the date of deposit with the U.S. Postal Service; or (ii) at the time of delivery to the submitting party at the address specified, or hand delivery to the submitting party or the agent of the submitting party at the office of the Modifications Committee.

(e) Start and Completion of Approved Construction. If construction does not commence on a project for which Plans have been approved within 120 days of the date shown on the notice of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Modifications Committee for reconsideration; provided, however, that the Modifications Committee may, in its sole discretion, grant a written extension of the time for commencement of construction. If construction is not completed on a project for which plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

11.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Modifications Committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, 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 proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.6 Variance. The Modifications Committee may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as, without limitation, unusual topography, natural obstructions, hardship or aesthetic or environmental considerations require, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties.

Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the Modifications Committee may not authorize variances without the written consent of the Declarant, as long as the Declarant owns any portion of the Properties or has a right to annex any property pursuant to Section 9.1.

11.7 Limitation of Liability for Application Decisions. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, the Board, nor the Modifications Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, nor the Modifications Committee, nor any member, director, officer, or authorized agent of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the foregoing shall be defended and indemnified by the Association as provided in this Declaration or the Bylaws.

11.8 Enforcement; Completion; Agents of Owner. Enforcement. Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Declarant, the Modifications Committee, or the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or promptly restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs of the Association, including any fees, fines, interest at the maximum rate then allowed by law, charges, reasonable attorneys' fees, filing fees and court costs, and administrative costs, may be assessed against the benefitted Lot and collected as a Benefitted Assessment unless otherwise prohibited in this Declaration.

(b) Completion Required. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Declarant or the Association shall, unless otherwise prohibited in this Declaration, be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefitted Assessment.

(c) Contractor As Agent of Owner. For the purposes of this Article, all acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association, its

officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

(d) Other Remedies. In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article.

## **ARTICLE XII: USE RESTRICTIONS AND OTHER RULES**

### 12.1 Plan of Development; Applicability; Effect.

(a) Plan of Development. Declarant has established a general plan of development for the Properties under this Declaration in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires in the community. The Properties are subject to Design Guidelines as set forth in Article XI and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Properties. The Governing Documents establish affirmative and negative covenants, easements, and restrictions on the Properties.

(b) Occupants and Lessees Bound. All provisions of the Governing Documents shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease or rental agreement for any Lot shall provide that the lessee and all occupants of the leased or rented Lot shall be bound by the terms of the Governing Documents.

### 12.2 Modification of Use Restrictions.

(a) Adoption by Board. Subject to the terms of this Article, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions set forth in Exhibit "C" limiting the rights of the Association, Members and others to use the Property. The Board shall notify Owners concerning any proposed modification, cancellation, limitation, creation of exceptions to, or expansion of the Use Restrictions at least five (5) business days prior to the Board meeting at which such action is to be considered. Such notice may be given in the manner set forth in Section 19.10(a). Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(b) Effective Date. Any such rules affecting Use Restrictions shall become effective on the date of adoption by the Board, or such later date as is determined by the Board, unless such are disapproved at a meeting or by written ballot of Owners representing at least a majority of the total Class "A" votes of the Association and, so long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, by the Declarant. The Board shall have no obligation to call a meeting or conduct a written ballot of the Owners to consider disapproval except upon receipt of a petition of the Owners as required for special meetings in the Bylaws. If a meeting to consider disapproval of a rule affecting Use Restrictions is properly requested by the Owners prior to the effective date of such rule, the rule shall not become effective until after such meeting is held.

(c) Adoption by Owners. Alternatively, the Owners, at a meeting or by written ballot duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions by a vote of Owners representing two-thirds (2/3) of the total Class "A" votes and, so long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, the approval of the Declarant. Members shall have a reasonable opportunity to be heard prior to such action being taken.

(d) Copy of Current Use Restrictions. The Association shall provide, without cost, a copy of the Use Restrictions and other applicable rules then in effect to any requesting Member or Mortgagee.

(e) No Modification of Other Governing Documents. Nothing in this Article shall authorize the Board or the Owners to modify, repeal or expand the Declaration (with the exception of the Use Restrictions), the Bylaws, the Articles, or the Design Guidelines. Such documents may only be amended as expressly set forth in this Declaration or as provided in the applicable Governing Document.

**12.3 Owners' Acknowledgment. All Owners and occupants are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Owners may add, delete, modify, create exceptions to, or amend the Use Restrictions in accordance with this Article and the Declaration. Each Owner by acceptance of a deed acknowledges and agrees that (i) the use and enjoyment and marketability of his or her property can be affected by this provision and (ii) the Use Restrictions and rules may change from time to time.**

12.4 Rights of Owners Regarding Use Restrictions. Except as may be specifically authorized by this Declaration, neither the Board nor the Owners may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners and occupants to display on their Lot political signs and symbols of the kinds normally displayed in or outside of residences located in single family residential neighborhoods in individually owned property shall not be abridged, except that the Association may adopt reasonable rules regarding the use of clearly offensive, lewd or pornographic wording or graphics, time of display, place, manner, size, location, and quality of construction for signs and symbols which are visible from outside the Lot.

(c) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable rules regarding the time of display, place, manner, size, location, and quality of construction for displays which are visible from outside the Lot.

(d) Household Composition. Except as otherwise set forth in this Declaration (including, without limitation, Section 2.3), no rule shall interfere with the freedom of occupants

of Dwelling Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the Common Area.

(e) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that (i) create monetary costs for the Association or other Owners, or (ii) create a danger to the health or safety of occupants of other Dwelling Units, or (iii) generate excessive noise or traffic, or (iv) create unsightly conditions visible outside the Dwelling Unit, or (v) create an unreasonable source of annoyance, or (vi) are unlawful.

(f) Pets. The Association may adopt rules designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, unusual pets, and numbers and characteristics of pets; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents a threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep animals, birds, reptiles or poultry of any kind for commercial or business purposes.

(g) Allocation of Burdens and Benefits. Except as permitted by this Declaration, the allocation of financial burdens and rights to use Common Areas among the various Lots in existence at the time of acquisition of a Lot by an Owner shall not be changed to the detriment of such Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Areas as provided in Article IV, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, fail to comply with the Governing Documents, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(h) Alienation. No rule shall prohibit the leasing or transferring of any Lot, or require consent of the Association or Board for leasing or transferring of any Lot; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association. Except for the New Member Fee imposed by Section 3.2(b), the Association shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the administrative costs to the Association incurred relating to a lease or transfer.

(i) Declarant's Rights to Develop. No rule or action by the Association or Board shall impede Declarant's right to develop in accordance with the Master Plan, including, but not limited to, the rights of the Declarant as set forth in Article XV.

(j) Abridging Existing Rights. Unless otherwise required to be removed by law, any rule which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was lawfully being kept on the Properties prior to the adoption of such rule and which was in compliance with the Governing Documents in force at such time.

(k) Not Applicable to Declaration Amendments. The limitations in this Section 12.4 shall apply to rules only and shall not apply to amendments to this Declaration adopted in accordance with Section 19.2.

12.5 Adoption of Rules Not Involving Use Restrictions. Nothing in Sections 12.2 through 12.4 shall limit the authority of the Board to adopt, modify, cancel, limit, create exceptions to, or expand rules and regulations governing the interpretation, enforcement or implementation of provisions of the Governing Documents other than the Use Restrictions, if such rules and regulations are adopted in accordance with this Declaration and the Bylaws.

### **ARTICLE XIII: EASEMENTS**

13.1 Easements of Encroachment. Declarant reserves unto itself, so long as it owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of the Declarant.

13.2 Easements for Utilities, Etc. (a) Declarant reserves unto itself, so long as it owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, and grants to the Association an easement for the purpose of access and maintenance upon, across, over, and under all of the Properties to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to Sun City Hilton Head, subject to the limitations herein.

(b) This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.



(c) Declarant specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Dwelling Unit on any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

13.3 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B" and any Contiguous Property whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. If the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

#### 13.4 Easements for Private Amenities.

(a) The owner of any Private Amenity, its respective agents, successors and assigns, shall at all times have a right and non exclusive easement of access and use over those portions of the Common Areas reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair and replacement of such Private Amenity.

(b) The owner of any Private Amenity, its respective agents, successors and assigns, shall have a perpetual, non exclusive easement to the extent reasonably necessary, over the Properties for the installation, maintenance, repair, replacement and monitoring of utility lines, wires, drainage pipelines and pipelines serving all or portions of such Private Amenity.

(c) There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, and authorized users, a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Private Amenities. Without limiting the generality of the foregoing, members of the Private Amenities and guests and authorized users of the Private Amenities shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenities to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

(d) The owner of any Private Amenity, its respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over such portion of the Properties designated by the Declarant as a common maintenance area. Such common maintenance area may be used by the owner of any Private Amenity and the

Association for offices of maintenance personnel, for the storage of maintenance vehicles, parts, fuel and materials, and for vehicle maintenance.

### 13.5 Easements for Golf Courses.

(a) **Golf Ball Retrieval.** Every Lot and the Common Area and the common property of any Neighborhood shall be subject to an easement permitting golf balls unintentionally to come upon such Common Area, Lots or common property of a Neighborhood and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Lot to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Association or its Members (in their capacity as such); the management company of the Association; the owner of any Golf Course; its successors, successors-in-title to any Golf Course, or assigns; any successor Declarant; any builder or contractor (in their capacities as such); any officer, director, partner, employee or agent of any of the foregoing, or any officer or director of any partner.

(b) **Irrigation.** The Properties immediately adjacent to any Golf Course shall be subject to a non exclusive easement in favor of the owner of such course for overspray of water from any irrigation system serving such course. The owner of any Golf Course may use treated effluent in the irrigation of any Golf Course. Under no circumstances shall the Association or the owner of any Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) **Golf Balls in Water.** The owner of any Golf Course, its respective agents, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from such Golf Course.

(d) **Installation and Maintenance of Irrigation.** The owner of any Golf Course, its respective agents, successors and assigns, shall have a perpetual non exclusive easement, to the extent reasonably necessary, over the Properties, for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, serving all or portions of the Golf Course.

(e) **Storm Water Runoff.** The Properties shall be subject to an easement in favor of any Golf Course for natural drainage of storm water runoff from such Golf Course.

(f) **Golf Cart Paths.** The Properties shall be subject to an easement in favor of any Golf Course for golf cart paths serving such Golf Course. Under no circumstances shall the Association or the owner of any Golf Course, or their respective agents, successors, or assigns, be held liable for any damage or injury resulting from the exercise of this easement. The owner of any Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course shall at all times have a right and

non exclusive easement of access and use over the golf cart paths, if any, located within the Properties as reasonably necessary for the use and enjoyment of the Golf Course.

(g) Use of Roadways; Parking. There is hereby established for the benefit of the owner of any Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course, a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Golf Course. Without limiting the generality of the foregoing, members of the Golf Course and guests and authorized users of the Golf Course shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after tournaments and other similar functions held by or at the Golf Course to the extent that the Golf Course has insufficient parking to accommodate such vehicles.

13.6 Easements for Cross Drainage. Every Lot and the Common Area shall be subject to an easement for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property and the Board.

13.7 Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

#### 13.8 Easements for Maintenance and Enforcement.

(a) Maintenance and Inspections. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot to (a) perform its maintenance responsibilities under Article V, and (b) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) Removal for Violations. The Association also may enter a Lot to abate or remove any structure, thing or condition which violates the Governing Documents, using such measures as may be reasonably necessary. All costs incurred, including sanctions and reasonable attorneys' fees, may be assessed against the violator as a Benefitted Assessment.

(c) **Overspray and Treated Effluent.** The Properties shall be subject to a non-exclusive easement in favor of the Association for overspray of water from any irrigation system serving the Area of Common Responsibility. The Association may use treated effluent in the irrigation of any Area of Common Responsibility. The Association shall not be liable for any damage or injury resulting from such overspray or the exercise of this easement.

**13.9 Rights to Stormwater Runoff, Effluent and Water Reclamation.** Declarant hereby reserves for itself and its designees, including but not limited to the owner of any Private Amenity, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

**13.10 Easements for Lake and Pond Maintenance and Flood Water.**

(a) **Irrigation; Retention Structures; Maintenance.** Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, rivers, streams, and wetlands located within the Area of Common Responsibility to (a) construct, maintain, and repair pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, rivers, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

(b) **Flooding, Filling and Drainage.** There is further reserved herein for the benefit of Declarant, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the Dwelling Units thereon) adjacent to or within one hundred feet of lake beds, ponds, rivers, streams and wetlands within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, rivers, streams, and wetlands within the Area of Common Responsibility subject to the approval of all appropriate regulatory bodies; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, rivers, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising their rights under this Section. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, hurricanes, or other natural occurrences.

**ARTICLE XIV: MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

14.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who (i) provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor; the name of the Owner granting such Mortgage as shown on the Mortgage, and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), and (ii) if such Mortgage is assigned by the Mortgagee to another institutional holder, insurer, or guarantor, notifies the Association of the name and address of such assignee, will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss known to the Association which materially and adversely affects a significant portion of the Properties or which materially and adversely affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency known to the Association in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other known violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification known to the Association of any insurance policy maintained by the Association insuring a Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder.

14.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.3 Notice to Association. Upon request, each Owner shall be obligated to promptly furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot, the name of the Mortgagor as shown on the Mortgage, and the applicable Mortgage number.

## **ARTICLE XV: DECLARANT'S RIGHTS**

15.1 Transfer of Declarant's Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Register of Deeds of Jasper County and Beaufort County, South Carolina. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" or any Contiguous Property in any manner whatsoever.

15.2 Approval of Zoning or Master Plan Changes. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Properties, acknowledges awareness that Sun City Hilton Head is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties (other than within said Owner's or other Person's Neighborhood), or (b) changes in any conceptual or master plan for the Properties, including, but not limited to, the Master Plan (other than within said Owner's or other Person's Neighborhood); provided such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

15.3 Improvements to Common Area. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing such improvements to the Common Area as it deems appropriate in its sole discretion.

15.4 Activities on Common Area and Declarant's Property. So long as construction and initial sales of Lots shall continue or the Declarant owns any Private Amenity, the Declarant and its designees may maintain and carry on upon the Common Area and any property owned by the Declarant such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, sales offices, and storage of building materials. The Declarant and its designees shall have easements for access to and use of such facilities. The Declarant's or any designee's unilateral right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Areas by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

15.5 Vacation Villas. The Declarant may, in its discretion, construct residential improvements for temporary occupancy within or adjacent to the Properties and designate such improvements as "Vacation Villas." Such Vacation Villas shall not be considered Dwelling Units or Lots; provided however, such Vacation Villas shall be subject to assessments as provided in Article X. The owners and occupants of Vacation Villas shall not become Members of the Association by virtue of their ownership or occupancy of such Vacation Villas. The Declarant may transfer or lease such Vacation Villas and make Vacation Villas available for use by guests selected in its sole discretion. The Declarant hereby reserves for itself and its guests a non-exclusive easement for use, access, and enjoyment in and to the Common Area, including but not limited to any recreational facilities within the Common Area.

15.6 Conversion of Vacation Villas to Lots. The Declarant may convert a Vacation Villa located in the Properties to a Lot by filing a Supplemental Declaration in the Register of Deeds identifying such property as a Lot or Lots. Such Supplemental Declaration shall not require the consent of the Neighborhood Representatives, but shall require the consent of the Declarant and the owner of such property, if other than the Declarant. Any such conversion of a Vacation Villa to a Lot shall be effective upon the filing of record of such Supplemental Declaration unless otherwise provided therein.

15.7 Restrictions on Rules. So long as the Declarant owns any portion of the Properties or any Private Amenity or has the right to annex property pursuant to Section 9.1, the Association shall not, without the prior written approval of the Declarant, adopt any policy, rule or procedure that:

(a) Limits the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

(b) Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Areas or any property owned by any of them in promotional materials;

(c) Limits or prevents owners of new residential housing constructed by the Declarant, its successors, assigns and/or affiliates in Sun City Hilton Head from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the Bylaws;

(d) Discriminates against or singles out any group of Association members or prospective members or the Declarant [this provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, Special Assessments and other mandatory fees or charges) that discriminates against or singles out any group of Association members or the Declarant, but shall not prohibit the establishment of Benefitted Assessments];

(e) Impacts the ability of the Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Sun City Hilton Head, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete Sun City Hilton Head shall be expressly included in this provision. Easements that may be established by the Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

(f) Impacts the ability of the Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

15.8 Use of Common Area to Interfere with Declarant's Rights. The Association shall not exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Properties, the Exhibit "B" property or any Private Amenity) to interfere with the rights of the Declarant set forth in this Declaration or to impede access to any portion of the Properties, the Exhibit "B" property or any Private Amenity over the streets and other Common Areas within the Properties.

15.9 Declarant Approval Required for Recording of Covenants. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent for so long as the Declarant owns any portion of the Properties or any Private

Amenity or has the right to annex Property pursuant to Section 9.1. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

15.10 Amendment of Article Requires Declarant Consent. This Article shall not be amended without the prior written consent of the Declarant so long as the Declarant owns any portion of the Properties or any Private Amenity or has the right to annex property pursuant to Section 9.1. The rights contained in this Article shall terminate upon the earlier of (a) 40 years after the conveyance of the first Lot to a Home Owner, or (b) upon recording by Declarant of a written statement that all sales activity has ceased. Thereafter, the Declarant and its designees may continue to use the Common Areas for purposes stated in this Article only pursuant to a rental or lease agreement between the Declarant and/or such designee and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas.

## **ARTICLE XVI: GOLF COURSES AND PRIVATE AMENITIES**

16.1 Right to Use. Access to and use of the Private Amenities are strictly subject to the rules and procedures of the Private Amenities, and no Person automatically gains any right to enter or to use those facilities by virtue of membership in the Association, ownership of a Lot, or occupancy of a Dwelling Unit. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

16.2 Change of Ownership or Operation Duties. The ownership or operational duties relating to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity, (c) the conveyance of a Private Amenity to one or more subsidiaries, affiliates, shareholders, employees, or independent contractors of the Declarant, or (d) the conveyance of a Private Amenity to the Association by the Declarant or any affiliate or designee of the Declarant. No consent of the Association or any Owner shall be required to effectuate such a transfer or conversion.

16.3 Future Conveyance to Association of Golf Course and Clubhouse.

(a) At a time to be determined in the Declarant's sole discretion, but not later than the termination of the Class "B" Control Period, the Declarant or, upon the direction of the Declarant, an affiliate of the Declarant, shall convey to the Association the initial 18 hole Golf Course and clubhouse to be located within the property described in Exhibits "A" and "B" and/or within any Contiguous Property. Such property shall be accepted by the Association, subject to any restrictions set forth in the deed of conveyance, including but not limited to, restrictions governing the use of such property.



(b) After such conveyance, the Association shall have the responsibility for the maintenance, operation, and insurance of such Golf Course in accordance with this Declaration; provided however, the Association shall not make any modification with regard to the maintenance, operation, or insurance of the Golf Course without the prior written consent of the Declarant, so long as the Declarant owns any portion of the Properties or any Private Amenity or has the right to annex property pursuant to Section 9.1.

16.4 No Representations Regarding Private Amenities. Except as provided herein, no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in conflict with this Section shall be effective without an amendment to this Declaration executed or joined into by the Declarant or the owner(s) of the Private Amenities which are the subject thereof.

#### 16.5 Assumption of Risk and Indemnification Relating to Golf Courses.

(a) Assumption of Risk. Each Owner, by its purchase of a Lot in the vicinity of any Golf Course, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any such Golf Course, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) use of effluent in the irrigation of the Golf Course, (e) reduction in privacy caused by constant golf traffic on the Golf Course or the removal or pruning of shrubbery or trees on the Golf Course, (f) errant golf balls and golf clubs, and (g) design of the Golf Course.

(b) Indemnification. Neither Declarant, the Association, Declarant's affiliates or agents, nor their officers, directors or employees shall be liable to any Owner or any other person claiming any loss of damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the Golf Course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents or the Association. The Owner shall indemnify and hold harmless Declarant, Declarant's affiliates and agents and the Association against any and all claims by Owner's visitors, tenants and others upon such Owner's Lot.

16.6 No Representation Regarding Views. Neither the Declarant, the Association nor the owner or operator of any Private Amenity or Golf Course guarantees or represents that any view over and across any Private Amenity or Golf Course from adjacent Lots will be preserved without impairment. No provision of this Declaration shall be deemed to create an obligation of the Association, the owner of any Private Amenity, nor the Declarant to prune or thin trees or other landscaping except as provided in Article V. The Association and the owner of any Private Amenity may, in their sole and absolute discretion, add trees and other landscaping to their Private Amenities and Golf Courses from time to time. In addition, the owner of any Golf Course may, in its sole and absolute discretion, change the location,

configuration, size and elevation of the tees, bunkers, fairways and greens on such Golf Course from time to time. Any such additions or changes to Golf Courses or Private Amenities may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any such addition or change to any Private Amenity may not adversely affect drainage flow across the Properties.

16.7 Notice of Modification of Adjacent or Visible Properties. Neither the Association nor the Modifications Committee, shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the owner of the Private Amenity or its authorized agent at least 15 days' prior written notice of its intent to approve or permit the same together with copies of the request and all other documents and information finally submitted in such regard. The owner of the Private Amenity or its authorized agent shall then have 15 days to approve or disapprove the proposal in writing delivered to the appropriate committee or association, stating in detail the reasons for any disapproval. The failure of the owner of the Private Amenity to respond to the notice within the 15 day period shall constitute a waiver of such owner's right to object to the matter. The foregoing shall not apply, however, to any construction, addition, alteration, change, or installation by the Declarant.

16.8 Limitations on Amendments Affecting Private Amenities. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefitting any Private Amenity, may be made without the written approval of the owner of the Private Amenities affected thereby. The Association shall have no power to promulgate Use Restrictions other than those set forth on Exhibit "C" which materially and adversely affect activities on or use of the Private Amenities without the prior written consent of the owners of the Private Amenities affected thereby. The foregoing shall not apply, however, to amendments made by the Declarant.

16.9 Cooperation. It is Declarant's intention that the Association and the Private Amenities shall cooperate to the maximum extent feasible in the operation of the Properties and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines.

## **ARTICLE XVII: DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

17.1 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to be bound by this Article (collectively, "Bound Parties") shall encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of and potential delays involved in litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described as "Claims" in Section 17.2 shall be resolved using the procedures set forth in Section 17.3 in lieu of filing suit in any court.

17.2 Claims.

(a) Claims Defined. Unless specifically exempted under paragraph (b) below, all claims, grievances or disputes (“Claims”) arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents, shall be subject to the provisions of Section 17.3.

(b) Matters Not Constituting Claims. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 17.3:

(i) any suit, action or proceeding at law or in equity, including, without limitation, any temporary restraining order, injunction or other equitable relief (together, a “Legal Action”) by the Association or the Declarant against any Bound Party to enforce the provisions of the Governing Documents, and any counterclaims in response thereto;

(ii) any Legal Action by an Owner to challenge the actions of the Declarant, the Association, the Covenants Committee, the Modifications Committee, or any other agent of the Association with respect to approval, disapproval, application or enforcement of the provisions of the Governing Documents, and any counterclaims in response thereto.

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

(v) any Legal Action in which any indispensable party is not a Bound Party; and

(vi) any Legal Action which otherwise would be barred by any applicable statute of limitations or would be likely to be barred by any applicable statute of limitations if processed as a Claim

(c) Claims by Consent of Parties. With the written consent of all parties thereto, any matter which is not a Claim, as set forth in subsection (b), may be submitted to the alternative dispute resolution procedures set forth in Section 17.3, or specific portions of the alternative dispute resolution procedures set forth in Section 17.3.

### 17.3 Mandatory Alternative Dispute Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing in accordance with Section 19.10(b) (the "Notice"), stating plainly and concisely:

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

(ii) the basis of the Claim (i.e. the specific authority out of which the Claim arises);

(iii) Claimant's proposed remedy; and

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

(b) Negotiation and Mediation.

(i) Good Faith Negotiation. The Parties shall make a 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 resolving the dispute by negotiation.

(ii) Mediation. If the Parties do not resolve the Claim within 30 days of the date of the Notice or such other period as may be expressly agreed upon in writing by the Parties ("Negotiation Termination Date"), any of the Parties shall have 30 days from the Negotiation Termination Date to submit the Claim to mediation under the auspices of an independent agency or court-approved arrangement providing dispute resolution services in the Beaufort County or Jasper County, South Carolina area.

(iii) Waiver of Claim. If no Party submits the Claim to mediation within 30 days after the Negotiation Termination Date, or the Claimant does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Documentation of Settlement. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not agree in writing to a settlement of the Claim within 30 days after the date the mediator acknowledges receipt of the Claim for mediation, or within such later time as is agreed upon in writing by the parties and the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Mediation Termination Notice"). The Mediation Termination Notice shall set forth that the Parties are at an impasse and the date that mediation was terminated ("Mediation Termination Date").

#### 17.4 Mandatory Binding Arbitration.

(a) Submission of Mediated Claim to Mandatory Arbitration. If a Mediation Termination Notice is issued and there is no written mediation settlement agreement, the Claimant shall have 30 additional days from the Mediation Termination Date to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator; provided that no Claim may be submitted which is excluded from mandatory arbitration pursuant to South Carolina law (an "Excluded Claim").

(b) Failure to Submit Arbitration Claim or Appear for Arbitration. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, any Claim other than an Excluded Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(c) Enforcement of Arbitration Award. This section 17.4 is an agreement to arbitrate and is enforceable under the applicable arbitration laws of the State of South Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of South Carolina.

17.5 Allocation of Costs of Mediation or Arbitration. Unless otherwise expressly agreed by the parties in writing, each Party to a mediation shall bear its own costs, including any attorneys' fees, and each Party shall share equally all charges by the mediator. Unless otherwise expressly agreed by the parties in writing or otherwise determined by the arbitrator(s), the costs of arbitration, including all filing fees and reasonable attorneys' fees of the prevailing party (as determined by the arbitrator), shall be paid by the Party that is not the prevailing party.

17.6 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any written mediation settlement agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 17.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

## **ARTICLE XVIII: COMPLIANCE WITH COUNTY REQUIREMENTS**

18.1 General. The purpose of this Article is to provide the Association and the Owners with notice of several of the requirements and obligations imposed on the Association and the Owners by the Development Agreements. Nothing in this Article shall be construed to modify, limit or expand any requirement or obligation imposed by either the Jasper County Development Agreement or the Beaufort County Development Agreement nor to reduce, limit or eliminate any requirement or obligation otherwise imposed by the Governing Documents. In the event of conflict between any provision of the Development Agreements, as they may be amended, and any provision of this Article, those of this Article shall be subject and subordinate to those of the Development Agreement.

18.2 Beaufort County Development Agreement. The Beaufort County Development Agreement and this Section shall apply only to that portion of the Properties located within Beaufort County, South Carolina.

(a) Recycling Programs. The Board shall establish a recycling program and recycling center within the Properties consistent with Beaufort County, South Carolina, laws. In

the event of conflict between the standards of Beaufort County and South Carolina laws, the more restrictive standard shall apply. All occupants of Dwelling Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

(b) Effluent. To the extent effluent is not accepted by the Declarant or its designees, the Association shall accept treated effluent as required by the Beaufort-Jasper Water and Sewer Authority and may use such effluent in the irrigation of any Golf Course or areas of the Area of Common Responsibility that are isolated from Dwelling Units; provided however, if the treatment level of the effluent is tertiary, the Association may use such effluent on all portions of the Area of Common Responsibility.

(c) Wells. No wells that draw water from the Upper Floridian aquifer as a primary source of potable water or irrigation water shall be constructed, except wells constructed by the Declarant or the Association as a back-up source for temporary emergency use when no other source of fresh water is available.

(d) Water Conservation. All automatic sprinkler systems installed within the Properties shall include rain sensors and must be approved in strict compliance with Article XI.

(e) Mulching of Landscape Waste. Except as provided in the Beaufort County Development Agreement, all landscape waste produced within the Properties shall be mulched for use within the Properties. The Association shall provide facilities within the Properties for grinding landscape waste or contract to dispose of such waste through a private contractor who grinds waste into mulch outside of the Properties; provided, such contractor shall be obligated to return an equivalent tonnage of mulch to the Properties. Declarant hereby reserves for the Association all rights to such landscape waste and mulch produced within the Properties; provided however, the Board may require Owners to use a proportionate share of such mulch on their Lots. This provision shall not apply to waste produced during initial site preparation and clearing or during construction activities within the first five years of development. Such waste may be disposed of in any manner permitted by law and in compliance with the Design Guidelines.

(f) County Approval Required. This Section may not be amended to be inconsistent with the Beaufort County Development Agreement without the prior written consent of the appropriate governmental authority of Beaufort County, South Carolina.

18.3 Jasper County Development Agreement, Town of Hardeeville Agreement. The Jasper County Development Agreement, Town of Hardeeville Agreement and this Section shall apply only to that portion of the Properties located within Jasper County, South Carolina.

(a) Recycling Programs. If and to the extent required under Jasper County, South Carolina, law, the Board shall establish a recycling program and recycling center within the Properties. All occupants of Dwelling Units shall support such program by recycling, to the

extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

(b) Effluent. To the extent effluent is not accepted by the Declarant or its designees, the Association shall accept treated effluent as required by the Beaufort-Jasper Water and Sewer Authority and may use such effluent in the irrigation of any Golf Course or areas of the Area of Common Responsibility that are isolated from Dwelling Units; provided however, if the treatment level of the effluent is tertiary, the Association may use such effluent on all portions of the Area of Common Responsibility.

(c) Water Conservation. All automatic sprinkler systems installed within the Properties shall include rain sensors and must be approved in strict compliance with Article XI.

(d) County Approval Required. This Section may not be amended to the contrary without the prior written consent of the appropriate governmental authority of Jasper County, South Carolina.

## **ARTICLE XIX: GENERAL PROVISIONS**

19.1 Term. This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 20 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

### 19.2 Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration; or (vi) eliminate or clarify any inconsistency or ambiguity in the Declaration.. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing. In addition, so long as Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, it may unilaterally amend this Declaration for any other

purpose, provided the amendment has no material adverse effect upon any right of any Owner. Thereafter and otherwise, this Declaration may be amended in accordance with Section 19.2(b).

(b) By Owners. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Neighborhood Representatives representing two-thirds (2/3) of the total Class "A" votes of the Association, and the written consent of the Declarant, so long as the Declarant owns any Private Amenity or any portion of the Properties or has the right to annex property pursuant to Section 9.1. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Register of Deeds of Jasper County or Beaufort County, South Carolina, whichever is earlier, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(d) Consent to Amendment by an Owner. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(e) Written Consent by Declarant Required for Certain Amendments. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege as long as the Declarant owns any Private Amenity or any portion of the Properties or has the right to annex property pursuant to Section 9.1.

19.3 Litigation by Association. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the Board, the affirmative vote or written consent, or any combination thereof, of Neighborhood Representatives representing a majority of the total Class "A" votes of the Association, and, during the Class "B" control period, the Declarant. The preceding sentence shall not apply, however, to judicial or administrative proceedings in which the Declarant is not a party and the rights of the Declarant are not at issue, and the proceeding involves either (a) an action brought by the Association to enforce the Governing Documents, (b) a challenge to ad valorem taxation, or (c) a defense or counterclaim by the Association in proceedings instituted against it. In the situations set forth in (a), (b) or (c), the Board shall determine the course of action for the Association.

19.4 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.



19.5 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

19.6 Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, Bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

19.7 Use of the Words "Sun City Hilton Head". No Person shall use the words "Sun City Hilton Head" or any derivative, or any other term which Declarant may select as the name of this development or any component thereof, in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Sun City Hilton Head" in printed or promotional matter solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Sun City Hilton Head" in its name.

19.8 Del Webb Marks. Any use by the Association of names, marks or symbols of Del Webb Communities or any of its affiliates (collectively "Del Webb Marks") shall inure to the benefit of Del Webb Communities and shall be subject to Del Webb Communities' periodic review for quality control. The Association shall enter into license agreements with Del Webb Communities, terminable with or without cause and in a form specified by Del Webb Communities in its sole discretion, with respect to permissive use of certain Del Webb Marks. The Association shall not use any Del Webb Mark without Del Webb Communities prior written consent.

19.9 Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Owner(s).

19.10 Notices to Owners.

(a) General Notices. Unless otherwise expressly stated in writing or required by law, general notices to Owners by the Association, the Board, or the Declarant may be given by any reasonable method, such as, without limitation:

(i) U.S. Postal Service and sent by First Class Mail, addressed to the current address of such Owner on the records of the Association, postage prepaid, or

(ii) delivery to the current address of such Owner on the records of the Association, or

- (iii) publication in the Association's newsletter, publication in a newspaper, or
- (iv) publication on any internet website or television channel that provides reasonable notice to Owners, or
- (v) any other notice procedure authorized by South Carolina law.

(b) Notices to Specific Owners or Occupants. Unless otherwise expressly stated in writing or required by law, notices to specific Owners, lessees or occupants by the Association, the Board, or the Declarant, shall be deemed to have been given in any of the following ways:

- (i) when such notice, addressed to the current address of such Person on the records of the Association is deposited, postage prepaid, with the U.S. Postal Service and sent by First Class Mail, in which event delivery shall be deemed to occur three (3) calendar days after the date of deposit with the United States Postal Service, or
- (ii) when delivered to the current address of such Person on the records of the Association, or
- (iii) when sent, postage prepaid, by any recognized courier or delivery services which provides confirmation of delivery (such as, without limitation, Federal Express or UPS), or
- (iv) when sent by internet or facsimile, in which event notice shall be deemed to occur on the date of acknowledgment or response by the recipient, or such earlier date as is acknowledged by the recipient, or
- (v) when sent by any other notice procedure authorized by South Carolina law.

**EACH OWNER (BY VIRTUE OF HIS, HER OR ITS ACCEPTANCE OF TITLE TO HIS, HER OR ITS LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS DECLARATION AND SHALL BE DEEMED TO HAVE WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION, THE MANAGEMENT COMPANY OF THE ASSOCIATION, THE DECLARANT AND ANY SUCCESSOR DECLARANT, THEIR DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS ARISING AS A RESULT OF IMPLEMENTATION OF THE GOVERNING DOCUMENTS.**

**EXHIBIT "A": LAND INITIALLY SUBMITTED**

ALL THOSE CERTAIN TRACTS OR PARCELS OF LAND, lying and being in Beaufort County, South Carolina, and being more particularly shown and delineated on a plat prepared for Del Webb Communities, Inc. by Thomas & Hutton Engineering Co., dated April 21, 1994, last revised April 28, 1994, entitled "Boundary Survey Parcels 1a, 1b, 1c and 1d Sun City Hilton Head, Beaufort County, South Carolina," and being recorded on May 2, 1994, in Plat Book 49, Page 102 of the Register of Deeds of Beaufort County, South Carolina;

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, lying and being in Beaufort County, South Carolina, and being more particularly shown and delineated on a plat prepared for Del Webb Communities Inc. by Thomas & Hutton Engineering Co., dated May 16, 1994, entitled "Boundary Survey Parcel 2 Sun City Hilton Head, Beaufort County, South Carolina," and being recorded on June 1, 1994, in Plat Book 49, Page 155 of the Register of Deeds Conveyances of Beaufort County, South Carolina.

*(NOTE: It is intended that the property subject to the Declaration also includes any property not referenced above but which was made subject to the Declaration by any of the "Subsequent Amendments" referenced in the second "Whereas" clause of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head.)*

**EXHIBIT "B": LAND SUBJECT TO ANNEXATION**

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, lying and being in Beaufort and Jasper Counties, South Carolina, and being more particularly shown and delineated on a plat prepared for Del Webb Communities, Inc., by Thomas & Hutton Engineering Co., dated September 8, 1993, entitled "Boundary Plat for a portion of the Argent and Okatie Tracts," and being recorded on March 10, 1994, in Plat Book 48, at Page 188 of the Register of Deeds of Beaufort County, South Carolina, and in Plat Book 21, Page 46 of the Register of Deeds of Jasper County, South Carolina;

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, lying and being in Beaufort County, South Carolina, and being more particularly shown and delineated on Exhibit 1 to the Amendment to Memorandum of Option dated January 21, 1994, and being recorded on March 10, 1994, in Deed Book 689, Page 2173 of the Register of Deeds of Beaufort County, South Carolina, and in Deed Book 6, Page 1059 of the Register of Deeds of Jasper County, South Carolina;

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, lying and being in Beaufort County, South Carolina, and being more particularly shown and delineated on a plat prepared by Harold R. Johnson, Surveyor, dated May 20, 1960, entitled "Tract 4 of Bull Hill Plantation," and being recorded in Plat Book 12, at Page 55 of the Register of Deeds of Beaufort County, South Carolina and being identified as Parcel No. 1 as shown on the County Tax Map No. 28 for the Bluffton Township District, Beaufort County, South Carolina (PIN #R600-028-000-0001-0000);

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND lying and being Parcel No. 1 as shown on the County Tax Map No. 79 for Jasper County, South Carolina (PIN #794-00-01-01).

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND lying and being Parcel A2, in Jasper County, South Carolina, and being more particularly shown and delineated on a plat prepared for JCSC Properties, L.L.C. by Thomas & Hutton Engineering Co., dated May 6, 2010, entitled "A Recombination of Parcel A2 and Phase 1-B, Formerly Parcel A2, Phase 1-B and a Portion of Parcel C", and being recorded on July 1, 2011, in Plat Volume 32, Page 357 of the Register of Deeds of Jasper County, South Carolina.

*(NOTE: The property listed above includes some property which has been made subject to the Declaration by the "Subsequent Amendments" referenced in the second "Whereas" clause of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head.)*

## **EXHIBIT "C": USE RESTRICTIONS**

(a) General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association consistent with this Declaration and any Supplemental Declaration), subject to applicable laws. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Declaration and the Association shall have standing and the power to enforce such standards.

(b) Prohibited Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(i) Signs. Posting of signs of any kind except those required by law, including posters, circulars and billboards; provided, one professionally lettered "for rent" or "for sale" sign may be displayed on a Lot being offered for lease or for sale if in accordance with any restrictions in size, coloring, lettering and placement of signs as may be adopted by the Board and the Modifications Committee and if approved by the Modifications Committee;

(ii) Subdivision. Subdivision of a Lot into two or more Lots after a subdivision plat including such Lot has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Lot, except that the Declarant shall be permitted to subdivide or change the boundary lines of Lots which it owns;

(iii) Use of Bodies of Water. Active use of lakes, ponds, rivers, streams, wetlands, or other bodies of water within the Properties or within any Golf Course, except that the owners of any Golf Courses and their agents, successors and assigns, shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas and except that the Board may allow use of non-motorized boats subject to any rules and regulations it may establish. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, rivers, streams, wetlands or other bodies of water within or adjacent to the Properties;

(iv) Interval Ownership. Operation of a timesharing, fraction sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(v) Number of Occupants. Occupancy of a Dwelling Unit by more than two persons per bedroom in the Dwelling Unit. For the purposes of this provision, "occupancy" shall be defined as staying overnight in the Dwelling Unit more than 30 days in any six-month period;

(vi) Wildlife. Capturing, trapping or killing wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons or pets on the Properties;

(vii) Pets. Raising, breeding or keeping of animals, birds, reptiles or poultry of any kind, except that a total of two dogs and cats and a reasonable number, as determined by the Board, of other usual and common household pets may be permitted on a Lot. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the Owners or occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet;

(viii) Alligators. Feeding, caring, taunting, or playing with any alligators on the Properties;

(ix) Destructive Activities. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or which result in unreasonable levels of sound or light pollution;

(x) Firearms and Explosives. Discharge of firearms or explosives within the Properties. The term "firearms" includes "B B" guns, pellet guns, and other firearms of all types, regardless of size;

(xi) Telecommunications. Except as set forth in the Design Guidelines, exterior antennas, aerials, satellite dishes, towers, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; provided, the Declarant and the Association shall have the right, without obligation, to erect or install and maintain such apparatus for the benefit of all or a portion of the Properties; and

(xii) Businesses. Conducting any Business, Trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities which are commonly conducted within residential areas within the Dwelling Unit so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (B) the business activity conforms to all zoning requirements for the Properties; (C) the business activity does not involve visitation of the Lot or Dwelling Unit by clients, customers, suppliers, or other business invitees or door to door solicitation of residents of the Properties; and (D) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

This subsection shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties, including the designation and use of Vacation Villas. The leasing of a Dwelling Unit shall not be considered a Business or Trade within the meaning of this subsection.

(c) Prohibited Conditions. The following shall be prohibited within the Properties:

(i) Walls, dog runs, animal pens, or fences of any kind on any Lot except as approved in accordance with Article XI; provided, the Declarant and the Association shall have the right, without obligation, to construct and maintain fences on any portion of the Properties which they own;

(ii) Open garage doors. Garage doors shall remain closed at all times except when entering and exiting the garage (iii) Excessive exterior lighting on any Lot. The Board shall in its sole discretion determine whether any exterior lighting is excessive;

(iv) Temporary Structures. Tents, shacks, or other structures of a temporary nature on any Lot except as approved in accordance with Article XI or as may be authorized by the Declarant during initial construction within the Properties. Approved temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair; and

(v) Storage. Storage of furniture, fixtures, appliances, machinery, equipment or other goods and chattels not in active use on the Common Area or any portion of a Lot which is visible from outside the Lot, except as approved in accordance with Article XI.

(d) Leasing.

(i) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Dwelling Units may be leased only in their entirety. No fraction or portion may be leased. No structure on a Lot other than the primary residential Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that any Lot comprised of more than one acre of land may make residential use of such a structure other than the primary residential Dwelling Unit for an ancillary use such as in-law suite or nanny suite, but not for independent leasing. There shall be no subleasing of Dwelling Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing. No transient tenants may be accommodated in a Dwelling Unit, and all leases shall be for an initial term of no less than 90 days. The leasing of any Lot is further subject to the restrictions on occupancy set forth in Section 2.3 of the Declaration.

(ii) Notice of Lease. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

(iii) Leasing by Declarant. Notwithstanding the above, Declarant retains the right to lease any Lot it owns for a period of not less than 30 days, provided the tenant is awaiting the completion of construction of a new home on a Lot he or she owns or is under a binding contract to purchase within Sun City Hilton Head.

(e) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Properties. Woodpiles or other material shall be stored in a manner so as not to be visible from outside the Lot and so as not to be attractive to native rodents, snakes, and other animals and to minimize the potential danger from fires. No other nuisance shall be permitted to exist or

operate upon any Lot so as to be offensive or detrimental to any other portion of the Properties. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(f) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved in accordance with Article XI or as required by the applicable governing jurisdiction. Such containers shall be kept inside garages or other structures on Lots except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(g) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

(h) Vehicles and Parking.

(i) The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, golf carts and recreational vehicles.

(ii) No vehicle may be left upon any portion of the Properties except in a garage, driveway, parking pad, or other area designated by the Board. Commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles shall not be parked within the Properties other than in enclosed garages; provided however, that one recreational vehicle, one camper, or one boat or other watercraft may be temporarily kept or stored completely in a driveway or completely on a parking pad on a Lot for not more than 24 hours within each seven day period.



## **EXHIBIT "D": RULES OF ARBITRATION**

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties in accordance with Section 19.10(b) of the Declaration stating plainly and concisely the information required by Section 17(a) of the Declaration and confirming Claimant's submission of the Claim to arbitration ("Arbitration Notice").

2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one Party Appointed Arbitrator, and all the Respondents shall agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three arbitrators.

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.

5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

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

8. There shall be no stenographic record of the proceedings.

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

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

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

12. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

13. There will be no post-hearing briefs.

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

15. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

16. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing. Notice and delivery shall occur in accordance with Section 19.10(b) of the Declaration or such other manner as is expressly agreed by the Parties in writing..

**EXHIBIT "E"**

**SECOND AMENDED AND RESTATED BYLAWS  
OF  
SUN CITY HILTON HEAD COMMUNITY ASSOCIATION, INC.**

**(Effective \_\_\_\_\_, 2012)**

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SECOND AMENDED AND RESTATED BYLAWS  
OF SUN CITY HILTON HEAD COMMUNITY ASSOCIATION, INC.

THIS SECOND Amended and Restated Bylaws of Sun City Hilton Head Community Association, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Sun City Hilton Head Community Association, Inc.

RECITALS

**WHEREAS**, Declarant executed an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head (hereinafter "2002 Declaration"), recorded May 17, 2002, in the Office of the Register of Deeds (hereinafter "ROD") for Beaufort County, South Carolina, in Deed Book 1582 at Page 407; and

**WHEREAS**, attached as Exhibit "E" to the 2002 Declaration are the Amended and Restated Bylaws (hereinafter "Bylaws") of Sun City Hilton Head Community Association, Inc. recorded on May 17, 2002, in the ROD in Deed Book 1582 at Page 468; and

**WHEREAS**, the Bylaws were amended by a First Amendment thereto recorded on May 12, 2004, in the ROD in Deed Book 1953 at Page 2045; and

**WHEREAS**, the Bylaws were amended by a Second Amendment thereto recorded on November 26, 2007, in the ROD in Deed Book 2654 at Page 59; and

**WHEREAS**, the Bylaws were amended by a Third Amendment thereto recorded on July 14, 2008, in the ROD in Deed Book 2745 at Page 730; and

**WHEREAS**, the Bylaws were amended by a Fourth Amendment thereto recorded on April 6, 2010, in the ROD in Deed Book 2946 at Page 1331; and

**WHEREAS**, Section 6.7(a) of the Bylaws states, in part, that "[u]ntil termination of the Class "B" Membership, Declarant may unilaterally amend these Bylaws for any purpose".

**WHEREAS**, the Class "B" Membership has not terminated; and

**WHEREAS**, Declarant desires to amend the Bylaws and record the amended Bylaws concurrently with the recordation of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head (hereinafter "Declaration").

**NOW, THEREFORE**, Declarant restates and amends the Bylaws as follows:

The Recitals set forth above are incorporated herein by reference.

**ARTICLE XX: Name, Principal Office, and Definitions**

1.1. **Name.** The name of the Association shall be Sun City Hilton Head Community Association, Inc. ("Association").

1.2. **Principal Office.** The principal office of the Association shall be located in Jasper County or Beaufort County, State of South Carolina. The Association may have such other offices as the Board may determine or as the affairs of the Association may require.

1.3. **Definitions.** The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Sun City Hilton Head filed in the Register of Deeds of Jasper County and Beaufort County, South Carolina ("Declaration"), unless the context indicates otherwise.

**ARTICLE XXI: Association: Membership, Meetings, Quorum, Voting,  
Proxies**

2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B", as set forth in the Declaration. The provisions pertaining to membership in the Declaration are incorporated herein by this reference.

2.2. Place of Meetings. Meetings of the Association, a Neighborhood and Neighborhood Representatives shall be held within the Properties or at such other suitable place within Jasper County or Beaufort County, State of South Carolina as may be designated by the Board.

2.3. Annual Meetings. Annual meetings of the Association shall be set by the Board so as to occur at least 30 days but not more than 120 days before the close of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings. The President may call special meetings of the Association, a Neighborhood or Neighborhood Representatives. In addition, it shall be the duty of the President to call a special meeting of the Association or Neighborhood Representatives within thirty (30) days or as soon thereafter as practicable, if so directed by resolution of the Board, or by written request of the Declarant, or upon a petition signed by at least ten percent (10%) of the Class "A" Members of the Association, or upon petition signed by Neighborhood Representatives representing at least at least twenty (20%) percent of the total Class "A" Members of the Association.

2.5. Notice of Meetings.

(a) Notice stating the place, date and hour of any meeting of the Association, a Neighborhood, or Neighborhood Representatives, as applicable, shall be delivered to each Member or Neighborhood Representative entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. Such notice shall be given in accordance with the procedure for General Notices set forth in Section 19.10 of the Declaration. For ease of reference, Section 19.10 states as follows:

"Unless otherwise expressly stated in writing or required by law, general notices to Owners by the Association, the Board, or the Declarant may be given by any reasonable method, such as, without limitation:

"(i) U.S. Postal Service and sent by First Class Mail, addressed to the current address of such Owner on the records of the Association, postage prepaid, or

"(ii) delivery to the current address of such Owner on the records of the Association, or

"(iii) publication in the Association's newsletter, publication in a newspaper, or

"(iv) publication on any internet website or television channel that provides reasonable notice to Owners, or

"(v) any other notice procedure authorized by South Carolina law."

(b) In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No other business shall be transacted at a special meeting except as stated in the notice.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Association or Neighborhood Representatives shall be deemed the equivalent of proper notice. Any Member or Neighborhood Representative may, in writing, waive notice of any meeting of the Association or Neighborhood Representatives, either before or

after such meeting. Attendance at a meeting by a Member or Neighborhood Representative shall be deemed waiver by such Member or Neighborhood Representative of notice of the time, date, and place thereof, unless such Member or Neighborhood Representative specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association, a Neighborhood or Neighborhood Representatives cannot be held because a quorum is not present, a majority of the Members or Neighborhood Representatives who are present at such meeting may adjourn the meeting to a date not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members or Neighborhood Representatives in the manner prescribed for regular meetings.

2.8. Voting Rights; Type of Vote; Ballot

(a) Votes by Class "A" Members. Members shall have such voting rights as are set forth in the Declaration. Such voting rights provisions are incorporated herein by this reference. The Board of Directors shall have the right to adopt Rules or Regulations further clarifying voting procedures if they are not inconsistent with the Declaration or the Bylaws.

(b) Neighborhood Representatives. Neighborhood Representatives shall have such voting rights as are set forth in the Declaration. Such voting rights provisions are incorporated herein by this reference.

(c) Votes by Written or Electronic Ballot; Form of Ballot. Any vote by a Voting Member or a Neighborhood Representative that may be taken at any annual, regular or special meeting may be by written or electronic ballot without a meeting in accordance with procedures established by the Board. Ballots shall be returned to the Secretary by the date of return specified on the ballot. The Board shall determine the form of all ballots, the wording on the ballot, any questions on which it seeks an advisory vote, and the deadline for return of ballots.

2.9. Proxies and Voting Authority.

(a) Neighborhood Representatives. Neighborhood Representatives may not vote by proxy but only in person or through their designated Alternate Neighborhood Representative or by written ballot as provided herein.

(b) Owners. Any Voting Member who is entitled to cast the vote for a Lot pursuant to Article III of the Declaration and these Bylaws may cast such vote in person or by proxy. Each proxy shall be in writing, dated, signed and filed with the Secretary prior to the meeting for which it is to be effective. Proxies may be delivered to the Secretary by personal delivery, U.S. mail, overnight courier, facsimile or scanned internet document, to any Board member or the professional management agent, if any. Unless otherwise provided in the proxy, a proxy shall cover all votes which the Voting Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. No proxy shall be valid more than 11 months after its execution unless otherwise provided in the proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of the Owner's Lot.

(c) More Than One Owner. If there is more than one Owner of a particular Lot, the vote for such Lot at any meeting or vote by written ballot of Owners shall be cast by one Person designated by the Owners to be the "Voting Member". The Owners shall advise the Secretary of the Association in writing as to the name of the Voting Member prior to any meeting or ballot. If no designation of the Voting Member is made and more than one (1) Person seeks to be the Voting Member for a Dwelling Unit, the Board may either (i) recognize one (1) Person as



the Voting Member or (ii) suspend the vote for the Lot (which shall still be counted for purposes of determining whether a quorum is present) until the issue has been resolved.”

(d) Votes by Owner Which Is A Business Entity. If a Lot is owned by a corporation, partnership, limited liability company, trust or other business entity, the person entitled to cast the vote of Lot as “Voting Member” shall be designated in writing, signed by an officer of the corporation, a partner of the partnership, a member or manager of the limited liability company, a trustee of the trust, or other appropriate official of the owning business entity, and filed with the Secretary of the Association. Such certificate is valid until revoked or superseded by a subsequent certificate or a change in the ownership of the Lot.”

(e) Failure to Designate Voting Member. If no certificate is on file with the Secretary of the Association for a Lot owned by more than one Person or a business entity, but an individual asserts his or her authority to vote on behalf of the Lot Owner, then the Lot Owner may be deemed present for the purpose of establishing a quorum but the Board or presiding officer may either, in their sole discretion, (i) recognize one (1) individual as the Voting Member, subject to subsequent verification satisfactory to the Board, in its sole discretion, or (ii) suspend the vote for the Lot until the issue has been resolved to the satisfaction of the Board, in its sole discretion.

2.10. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Owners, Members, Neighborhood Representatives, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

2.11. Quorum.

(a) Association Membership Meeting. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of twenty (20%) percent of the Voting Members entitled to cast the Class “A” votes in the Association shall constitute a quorum at all meetings of the Association Membership.

(b) Neighborhood Meeting. The presence in person or by proxy of twenty (20%) percent of Voting Members attributable to Lots in a Neighborhood shall constitute a quorum at any Neighborhood Meeting, including, but not limited to, the election of Neighborhood Representatives.

(c) Neighborhood Representatives Meeting. The presence in person of twenty (20%) percent of the Neighborhood Representatives entitled to cast the vote on behalf of the Neighborhood shall constitute a quorum at any meeting of Neighborhood Representatives.

2.12. Conduct of Meetings. The President of the Board shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting. In the event of the absence of the President, the Vice President shall act in his stead. In the event of the absence of the Vice President or Secretary, any person designated by the Board of Directors shall act in the stead of the absent officer. Meetings of the Neighborhood Representatives shall be held in accordance with procedures set forth by the Board.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Voting Members or Neighborhood Representatives may be taken without a meeting if written consent specifically authorizing the proposed action is signed by each of the Voting Members or Neighborhood Representatives entitled to vote. All such consents shall be signed within 60 days after receipt of the earliest dated consent, shall be dated, and shall be delivered to the Association at its principal place of business in the State of South Carolina. Such consents shall be filed with the minutes of the Association. This provision shall be in addition to the right to vote by ballot pursuant to Section 2.8.

## **ARTICLE XXII: : Board of Directors: Number, Powers, Meetings**

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

3.1. Governing Body; Composition.

(a) The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or residents of Dwelling Units who have completed, prior to or after being elected to the Board, such training and committee or other service requirements as are established by the Board. No more than one representative from a Lot may serve on the Board at the same time.

(b) In the case of a Member which is not a natural person, any officer, director, partner, member, trust officer or duly authorized representative of such Member, shall be presumed to be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member. Prior to or after being elected to the Board, such Directors shall undergo such training and committee or other service requirements as are established by the Board. No Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. Number of Directors. The Association shall be governed by a Board of Directors consisting of seven members.

3.3. Termination of Right of Class "B" Members to Appoint Any Directors. Subject to the provisions of Section 3.5, the directors shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) Whenever the "Class "B" Control Period ends, as set forth in Section 3.3 (b) of the Declaration; or

(b) Whenever the Class "B" Member so determines; provided, however, that such determination shall be evidenced by a written statement signed by the Class "B" Member, evidencing the intent of the Class "B" Member to permanently terminate its right to appoint some or all directors, effective as of the date set forth in such statement, and such statement is recorded, by Declarant or with Declarant's express written consent, in the Register of Deeds for Beaufort County.

3.4. Nomination of Directors.

(a) Except with respect to directors appointed by the Class "B" Member, nominations for election to the Board shall be made by a Committee. The members of the Committee shall be Owners, residents of Dwelling Units, or any officer, director, partner, member or manager of a limited liability company, or trust officer of a Member which is not a natural person. The Committee shall be appointed by the Board to serve a term to be determined by the Board or until their successors are appointed.

(b) The Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled from each slate as provided in Section 3.5. All candidates shall have a reasonable opportunity to communicate their qualifications to the Owners and to solicit votes.

(c) In order to minimize potential conflicts of interest, Owners who are former employees of the Association, Declarant or Declarant's affiliates, and spouses of such employees, shall not be able to serve as directors elected by the Class "A" Members for a period which ends one (1) year after the Declarant is no longer the Class "B" Member.

3.5. Election and Term of Office. Notwithstanding any other provision of these Bylaws:

(a) The Association shall hold an annual election at which Class "A" Members shall be entitled to elect such directors as is necessary to fill seats for three (3) Class "A" Member-elected directors. Such election may occur at the Annual Meeting or at such other time as is specified by the Board of Directors. If the election occurs at the Annual Meeting, the term will commence on the later of (a) the first day of the month

following the election or (b) January 1 following the election. If the election occurs on a different date other than the Annual Meeting, the term will commence on the first day of the month following the election.

(b) In 2012, the candidate receiving the most votes shall be elected and shall serve a term of two (2) years. In 2013, two (2) candidates shall be elected by the Class "A" Members. The candidate receiving the most votes shall be elected and shall serve a term of three (3) years. The candidate receiving the second most votes shall be elected and shall serve a term of two (2) years. Notwithstanding the preceding two sentences, the terms of the directors elected in 2012 and 2013 shall end on the first day of the month following the election of their successors.

(c) At any time, the Class "B" Member may, in its sole discretion, allow Class "A" Members, other than the Declarant, to elect any director or directors who otherwise would be an appointee of the Class "B" Member. Such decision of the Class "B" Member shall be in writing setting forth the date such decision shall be effective, which writing shall be delivered to the Board of Directors. Prior to the effective date, the Association shall hold an election at which Class "A" Members, other than the Declarant, shall be entitled to elect such additional director(s). Notwithstanding, such director(s) shall serve at the discretion of the Class "B" Member and may be removed at any time by the Class "B" Member by written notice delivered to the Board of Directors. The right of the Class "B" Member to remove and replace such director(s) may only be waived by a written document signed by the Class "B" Member and setting forth the date such decision shall be effective, which document is recorded, by Declarant or with Declarant's express written consent, in the Register of Deeds for Beaufort County.

(d) Within one hundred twenty (120) days after the termination of the right of the Class "B" member to appoint directors (whether as the result of (i) the filing by the Class "B" Member of the waiver referenced in the last sentence of paragraph (c), above, or (ii) the termination of the "Class "B" Control Period, as set forth in Section 3.3, above), the Association shall hold an election at which all directors shall be elected as set forth in paragraph (e), below (provided, however, during such intervening period the directors shall continue to serve, be removed and be replaced in the same manner as previously existing):

(e) In the situation set forth in paragraph (d), above, the directors shall be elected by both Class "A" and Class "B" Members. In such election, pursuant to Section 3.3 of the Declaration, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Lot it owns. There shall be no cumulative voting. If the election occurs at the Annual Meeting, the term will commence on January 1. If the election occurs on a different date, the term will commence on the first day of the month following the election, or the first day of the month following the election of his or her successor, whichever is later. For the first election held pursuant to this subsection, the newly elected directors' terms may be staggered as determined by the currently seated Board. Thereafter, all terms shall be for a term of three (3) years.

### 3.6. Removal of Directors and Vacancies.

(a) Except as set forth above, any director elected by Class "A" Members may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such director, but shall not be subject to removal solely by the Class "B" Member. Any director whose removal is sought shall be given notice prior to any meeting of the Class "A" Members called and noticed for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director. Notwithstanding, if the term of the removed director will expire within one (1) year of the date that such director is removed by the Class "A" Members, then, in the sole discretion of the Board, a successor may be appointed by the Board to fill the vacancy for the remainder of the term.

(b) Any director elected solely by the Class "A" Members may be removed for cause by a majority of the other directors present at a regular or special meeting of the Board at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. Conditions constituting grounds for removal for cause shall include (without limitation): (i) having three (3) consecutive unexcused absences from Board meetings, (ii) being more than thirty (30) days delinquent in the payment of any assessment or other charge due the Association, (iii) failing to perform the duties of a director as set forth in the Bylaws or

applicable law; (iv) violating any code of conduct for a Board member reasonably adopted by the Board or imposed by applicable law; (v) disclosing confidential information of the Association or the Board that is not authorized by the Board or required by the Declaration, the Bylaws or applicable law; (vi) engaging in inappropriate, illegal or improper conduct or behavior that negatively reflects on the Association or adversely affects the Association's orderly conduct of business; or (vii) having an irresolvable or unreported conflict of interest. Notwithstanding, if the removed Class "A" Member elected director occupies a position that otherwise would be appointed by the Class "B" Member, and the Class "B" Member has not filed a written waiver of its right to remove and replace a director as referenced in the last sentence of Section 3.5(c), then the Class "B" Member successor shall have right to approve such successor.

(c) In the event of the death, disability, or resignation of a director elected by Class "A" Members, the Board, including directors appointed by the Class "B" Member, may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a director to serve the remainder of the director's term of office. This shall not affect the right of the Class "B" Member set forth in Section 3.5(c) to elect to declare a vacancy and appoint a successor for any director elected by Class "A" Members who otherwise would be an appointee of the Class "B" Member.

3.7. Organizational Meetings. The Board shall hold its first meeting within 60 days after each annual election of directors.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as the Board shall determine, but at least one such meeting shall be held each quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by internet or facsimile, with acknowledgement of receipt or response by recipient. All such notices shall be given at the director's telephone number, internet address, or facsimile number or address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States Postal Service mailbox at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be given at least 48 hours before the time set for the meeting.

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

3.11. Quorum of Board of Directors. At all meetings of the Board, 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, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than two nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Compensation. No director shall receive any compensation from the Association for acting as such; provided however, any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

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

3.14. Open Meetings. Subject to the provisions of Sections 3.15 and 3.16, all meetings of the Board shall be open to all Members, but a Member other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by the President and approved by the Board. In such case, the President may limit the time any Member may speak. Notwithstanding the preceding sentence, the President may adjourn any meeting of the Board and reconvene in executive session, in which only Directors and persons authorized by the Board may participate, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters or confidential business information.

3.15. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote. Written consent or consents shall be filed with the minutes of the proceedings of the Board.

3.16. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all Persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

3.17. Powers. The Board shall have all of the powers and duties necessary and appropriate for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these Bylaws, or South Carolina law directed to be done and exercised exclusively by the Owners or Neighborhood Representatives generally.

3.18. Duties. The duties of the Board shall include, without limitation:

(a) preparation and adoption of annual budgets and establishing each Owner's share of the Common Expenses and Neighborhood Expenses, if any;

(b) levying and collecting assessments from the Owners to fund the Common Expenses and Neighborhood Expenses, if any;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

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

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

(f) making and amending rules and regulations, including Use Restrictions, and establishing penalties for infractions thereof;

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

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules adopted by the Board and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

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

(k) paying all taxes and/or assessments which are or could become a lien on the Common Area or a portion thereof;

(l) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

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

(n) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Declaration, the Articles, the Bylaws, rules and all other books, records, and financial statements of the Association;

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

(p) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by South Carolina law, the Articles, and these Bylaws; and

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

### 3.19. Right of the Class "B" Member to Disapprove Actions

(a) So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the judgment of the Class "B" Member, would tend to impair rights of the Declarant or its designees under the Declaration or these Bylaws, or interfere with development, construction or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Class "B" Member or the Declarant in the Declaration or these Bylaws.

(b) The Class "B" Member shall be given written notice of all meetings of the Association, the Board or any committee thereof and of all proposed actions of the Association, the Board or any committee thereof to be approved at such meetings or by written consent in lieu of a meeting. Such notice shall be given by

certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the Secretary of the Association, as it may change from time to time, which notice complies with the requirements for Board meetings set forth in these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting.

(c) The Class "B" Member shall be given the opportunity at each 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. The Class "B" Member, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(d) No action, policy or program subject to the right of disapproval by the Class "B" Member set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (e) below has expired.

(e) The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove an action, policy or program at any time within 10 days following the meeting at which such action was taken. In the case of any action taken by written consent in lieu of a meeting or any action for which the Class "B" Member or directors representing the Class "B" Member were not given notice, the Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following receipt of written notice of the proposed action. The right of the Class "B" Member to disapprove may be used to block proposed actions, but shall not require any action or counteraction on behalf of any committee, the Board, or the Association unless such action or counteraction is required to countermand an action, policy or program that was not properly noticed and implemented in accordance with these Bylaws. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide pursuant to the Declaration or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. Management. The Board may, but shall not be required to, employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize; provided, however, that such management agent may not be terminated by the Board without the prior written consent of the Declarant for as long as the Declarant owns any portion of the Properties or any Private Amenity or has the right to annex property pursuant to Section 9.1 of the Declaration. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager. The Board may delegate to such management agent(s) such powers as are necessary to perform his or her assigned duties, but shall not delegate policy making authority. The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed; provided however, that any "shortage" shall be calculated on a cash basis of accounting as provided in Section 10.2 of the Declaration;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) the following financial and related information shall be regularly prepared by the Board and copies made available to all Members of the Association at the expense of the Association:

(i) The Board shall cause a reserve budget and a Common Expense budget (collectively referred to as the "Budget") for the Association (which includes the budget for each of the Neighborhoods, if any), to be prepared for each fiscal year of the Association. The Board shall post written notice in a prominent place within the Properties that the Budget is available at the business office of the Association or at another suitable location within the Properties. If any Member requests a copy of the Budget, the Association shall provide one copy to the Member without charge by either (x) depositing a copy into a United States Postal Service mailbox within 7 days of receipt of such request, or (y) if the Member so requests, sending a copy by internet within 7 days of receipt of such request.

(ii) The Board shall cause an annual report ("Financial Statement") to be prepared in accordance with generally accepted accounting principles within 120 days after close of the Association's fiscal year. The Board shall post written notice in a prominent place within the Properties that the Financial Statement is available at the business office of the Association or at another suitable location within the Properties. If any Member requests a copy of the Financial Statement, the Association shall provide one copy to the Member without charge by either (x) depositing a copy into a United States Postal Service mailbox within 7 days of receipt of such request, or (y) if the Member so requests, sending a copy by internet within 7 days of receipt of such request. The Financial Statement shall consist of:

(A) a balance sheet as of the end of the fiscal year;

(B) an income and expense statement for the fiscal year (this statement shall include a schedule of assessments received and receivables identified by the numbers of the Lots and the names of the Owners assessed); and

(C) a statement of changes in financial position for the fiscal year.

Such Financial Statement shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant.

(iii) The Board shall do the following at least quarterly:

(A) cause a current reconciliation of the Association's operating accounts to be made and review the same;

(B) cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(C) review the current year's actual reserve revenues and expenses compared to the current year's Budget;

(D) review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts;

(E) review an income and expense statement for the Association's operating and reserve accounts; and

(F) review the 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.

3.22. **Borrowing.** The Association, acting through its Board, shall have the power to borrow money for any legal purpose; provided, the Board shall obtain the approval by vote or written consent of Neighborhood



Representatives representing at least a majority of the total Class “A” Members if the proposed borrowing is for the purpose of making discretionary capital improvements or purchasing additional capital assets and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 25% of the budgeted gross expenses of the Association for that fiscal year.

3.23. Rights of the Association. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, Neighborhood Associations and other owners or residents associations, both within and outside the Properties.

3.24. Enforcement.

(a) Governing Documents Defined: “Governing Documents” are defined by the Declaration as “the Declaration and any Supplemental Declaration, the Bylaws, rules and regulations, the Design Guidelines, the Use Restrictions, or any document authorized pursuant to any of them, as amended from time to time.”

(b) Modifications Committee Enforcement of Architectural and Design Standards: The Modifications Committee, as defined in Article XI of the Declaration, shall enforce the Design Guidelines and procedures established pursuant to Article XI of the Declaration. The Board may, in its discretion, establish procedures for hearings or review of hearings relating to Modifications Committee actions by the Board or the Modifications Committee.

(c) Covenants Committee Enforcement of Other Provisions of Governing Documents:

(i) Notice. Prior to imposition of any sanction authorized by the Declaration relating to the enforcement of the Governing Documents, other than matters under the jurisdiction of the Modifications Committee as set forth in paragraph (b), above, the Covenants Committee or the Association management agent shall give written notice to the alleged violator, which notice shall include (A) the nature of the alleged violation, (B) the proposed sanction to be imposed, (C) the opportunity for the alleged violator to present a written request for a hearing to the Covenants Committee within 14 days of the date of the notice; and (D) a statement that the proposed sanction shall be imposed unless a request for a hearing is received by the Covenants Committee within such time period. If a timely request for a hearing is not received by the Covenants Committee, the sanction stated in the notice shall be imposed; provided, however, the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured or if a cure is diligently commenced within the 14 day period. Such suspension shall not constitute a waiver of the Association’s right to sanction future violations of the same or other provisions and rules by any Person.

(ii) Hearing. If a hearing is requested within the allotted 14 day period, the hearing shall be held before the Covenants Committee. The alleged violator shall be afforded a reasonable opportunity to be heard and reasonable proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is provided by the Person who delivered or originated the notice. The notice requirement shall be deemed satisfied if the 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.

(iii) Appeal. If a hearing is held before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the management agent, President, or Secretary of the Association within 14 days after the hearing date. Unless expressly authorized by the Covenants Committee or the Board, in their sole discretion, the sanction imposed by the Covenants Committee shall not be deferred pending the appeal hearing. If the sanction is deferred during the appeal, however, but the sanction imposed by the Covenants Committee is upheld on appeal, the sanction shall be effective as of the date initially imposed by the Covenants Committee.

(iv) Imposition of Sanctions Prior to Hearing. If the Board determines that prompt imposition of a sanction may be required to avoid or decrease the possibility of injury to persons or damage to property, or to enforce important provisions of the Governing Documents, then (A) the above hearing and appeal process shall not be a prerequisite to the imposition of a sanction, and (B) the Board may authorize the Association to initiate or respond to a legal action or proceeding, including, without limitation, a temporary restraining order or other mandatory or prohibitive equitable relief.

### **ARTICLE XXIII: : Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President, Vice President, Secretary and Treasurer shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual election of directors, as set forth in Article III.

4.3. Removal and Vacancies. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Vice President shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting. The Secretary shall keep the minutes of all meetings of the Association and the Board and shall have charge of such books and papers as the Board may direct. In the Secretary's absence, any officer directed by the Board shall perform all duties incident to the office of secretary. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

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

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by resolution of the Board.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12 hereof.

### **ARTICLE XXIV: : Committees**

5.1. General. The Board may establish such committees and charter clubs as it deems appropriate to perform such tasks and functions as the Board may designate by resolution. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, however, any committee member, including the committee chair, may be removed by the vote of a majority of the directors. Any resolution establishing a charter club shall designate the requirements, if any, for membership therein. Each committee and charter club shall operate in accordance with the terms of the resolution establishing such committee or charter club.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board shall 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, these Bylaws, and any resolutions the Board may adopt, the Covenants Committee shall have such authority as is set forth in Section 3.24 (c) of these Bylaws.

5.3. Neighborhood Committees.

(a) In addition to any other committees established as provided above, each Neighborhood may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. Upon written petition signed by Owners of 25% of the Lots within any Neighborhood, the Board shall call for an election of a Neighborhood Committee for such Neighborhood no later than 60 days from receipt of such petition or within 425 days following the first closing in that Neighborhood, whichever occurs first. Such first election may be held at a meeting or by written ballot at the discretion of the Board. Such Neighborhood Committees, if formed, shall consist of three members; provided, however, by a majority vote of the Owners within the Neighborhood this number may be increased to five. Two members of the Neighborhood Committee shall be the Neighborhood Representative and alternate Neighborhood Representative.

(b) Each Owner of a Lot within a Neighborhood may cast the vote(s) assigned to his or her Lot in the Declaration for each vacancy to be filled on the Neighborhood Committee. The candidate(s) receiving the most votes shall be elected. The presence in person or by proxy of Voting Members representing at least twenty (20%) percent of the total Class "A" attributable to Lots in the Neighborhood shall constitute a quorum at any meeting of the Neighborhood.

(c) If a Neighborhood Committee has been formed for a particular Neighborhood, subsequent members of the committee shall be elected by the vote of Owners of Lots within that Neighborhood at their annual meeting. The annual meeting date shall be set by the Neighborhood Committee so as to occur at the same time as the election of the Board and the Neighborhood Representatives.

(d) Each Neighborhood Committee shall adopt rules and procedures for the operation of such committee which shall be distributed to all Owners within such Neighborhood; provided however, that such rules and procedures shall not conflict with any provisions of the Governing Documents of the Association, or any Board resolution.

(e) Committee members shall be elected for a term of two years or until their successors are elected, whichever is longer. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board.

(f) In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedural requirements set forth in these Bylaws.

## **ARTICLE XXV: : Miscellaneous**

6.1. Fiscal Year. The fiscal year of the Association shall be January 1 through December 31 unless otherwise established by Board resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles, the Declaration, or these Bylaws.

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

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, Bylaws, and Articles, any amendments to the foregoing, the rules of the Association, the membership register, the most recent Financial Statement, the current Budget, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable 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;

(iii) payment of the cost of reproducing copies of documents requested, including, without limitation, the costs of personnel reproducing such documents; and

(iv) procedures for ensuring the security, and, where appropriate, the confidentiality of the documents and reasonably minimizing interruption of the normal activities of the Association or the custodian of the records.

(c) Inspection by Directors. Every director shall have the right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association in furtherance of such director's duties as a director, but shall be subject to the conditions set forth in (b)(i), (ii) and (iv), above.

6.5. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications to Members under these Bylaws shall be in writing. Notice shall be given in accordance with Section 19.10 of the Declaration.

6.6. Indemnification.

(a) The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred by them and each of them in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

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

6.7. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend these Bylaws for any purpose. Thereafter, Declarant may unilaterally amend these Bylaws if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of these By-Laws; or (vi) eliminate or clarify any inconsistency or ambiguity in these By-Laws. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing. In addition, so long as Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1 of the Declaration, it may unilaterally amend these Bylaws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. Thereafter and otherwise, these Bylaws may be amended in accordance with Section 6.7(b).

(b) By Board. Except as provided by subsection 6.7(a) above, until the termination of the Class "B" Control Period, as set forth in Section 3.3, above, these Bylaws may be amended only by resolution duly adopted by the Board and with the written consent of the Declarant.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation in the Office of the Register of Deeds for Beaufort County and/or Jasper County, South Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

(d) Authority of Owner to Consent to Amendment. If an Owner consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Owner has the authority to do so, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(e) No Modification of Declarant's Rights. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege for as long as the Declarant owns any Private Amenity or any portion of the Properties or has the right to annex property pursuant to Section 9.1 of the Declaration.

102  
108 PB  
Sun City Owners  
112

BEAUFORT COUNTY SC - ROD  
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FILE NUM 2012019293  
04/09/2012 02:54:10 PM  
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RECORDING FEES 108.00

**THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO  
THE SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10, et seq. CODE OF  
LAWS OF SOUTH CAROLINA, 1976**

**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**SUN CITY HILTON HEAD**



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**EXHIBIT "E": BYLAWS**

THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO  
THE SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10, et seq., CODE OF  
LAWS OF SOUTH CAROLINA, 1976

SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR SUN CITY HILTON HEAD

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUN CITY HILTON HEAD ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by Del Webb Communities, Inc., an Arizona corporation, its successors and assigns, (herein referred to as the "Declarant").

RECITALS:

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, dated September 8, 1994, ("Initial Declaration"), and caused the Declaration to be recorded at Book 729, Page 1497, in the Register of Deeds for Beaufort County, South Carolina ("ROD"); and

WHEREAS, Declarant subsequently executed and recorded amendments and supplemental declarations to the Initial Declaration, including, without limitation, the following amendments and supplemental declarations (the "Subsequent Amendments"), which Initial Declaration, Subsequent Amendments, this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions, and all other amendments and supplemental declarations, are hereinafter collectively referred to as the "Declaration":

1. First Amendment, July 14, 1997, recorded in Deed Book 958 at Page 2595, in the ROD;
2. Second Amendment, August 3, 1999, recorded in Deed Book 1199 at Page 2524, in the ROD;
3. Third Amendment, May 31, 2000, recorded in Deed Book 1296 at Page 2561, in the ROD;
4. Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded May 17, 2002, in Deed Book 1582 at Page 407, in the ROD;
5. First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded October 24, 2003, in Deed Book 1860 at Page 2193, in the ROD;
6. Second Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded April 13, 2004, in Deed Book 1937 at Page 1677, in the ROD;

7. Third Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded July 21, 2005, in Deed Book 2191 at Page 2059, in the ROD;

8. Fourth Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded February 28, 2007, in Deed Book 2529 at Page 351, in the ROD;

9. Fifth Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head, recorded July 14, 2008, in Deed Book 2745 at Page 730, in the ROD;

10. Various Amended Supplemental Declarations of Covenants, Conditions and Restrictions for Sun City Hilton Head relating only to certain portions of the Property subject to the Declaration; and

WHEREAS, Declarant (a) is, or was at the time, the owner of the real property described in Exhibits "A," or "B", attached hereto and incorporated herein by this reference, and (b) is, or was at the time, the owner of the real property subjected to the Declaration and described in any exhibits to the Subsequent Amendments; and

WHEREAS, Section 19.2 of the Declaration states, in part: "Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose"; and

WHEREAS, the Class "B" membership has not terminated, and

WHEREAS, Declarant desires to amend the Declaration in order to (a) incorporate the amendments and supplements to the Initial Declaration and (b) clarify other issues and provisions of the Declaration.

NOW, THEREFORE, DECLARANT RESTATES AND AMENDS THE DECLARATION AS FOLLOWS:

The recitals set forth above are incorporated herein by reference.

This Declaration imposes upon the Properties (as defined in Article I) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. The Properties shall be held, sold, used and conveyed subject to the following provisions, easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of, and which shall run with, the Properties. This Declaration shall be binding on and shall inure to the benefit of all Persons having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, legal representatives, and assigns.

#### ARTICLE I: DEFINITIONS



The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Area of Common Responsibility": The Common Area, together with those areas, if any, which, by the terms of this Declaration, any Supplemental Declaration or other applicable covenants approved by Declarant, any plat approved or authorized by Declarant, or by contract, become the responsibility of the Association.

1.2 "Articles": The Articles of Incorporation of Sun City Hilton Head Community Association, Inc., as filed with the South Carolina Secretary of State.

1.3 "Association": Sun City Hilton Head Community Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

1.4 "Base Assessment": Assessments levied on all Lots subject to assessment to fund Common Expenses for the general benefit of all Lots, as more particularly described in Section 10.3.

1.5 "Beaufort County Development Agreement": The Development Agreement between Del Webb Communities, Inc., and the County of Beaufort, South Carolina, dated December 16, 1993, and recorded at Deed Book 683, Page 967, et seq., Register of Deeds of Beaufort County, South Carolina and by this reference incorporated herein, as it may be amended. (The Beaufort County Development Agreement and the Jasper County Development Agreement may be referred to herein jointly as the "Development Agreements").

1.6 "Benefitted Assessment": Assessments levied pursuant to Section 10.7.

1.7 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws.

1.8 "Business" and "Trade": Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.9 "Bylaws": The Bylaws of Sun City Hilton Head Community Association, Inc. attached hereto as Exhibit "E" and incorporated by reference, as they may be amended from time to time.

1.10 "Class "B" Control Period": The period ending on the date that the Class "B" Membership shall cease, as set forth in Section 3.3.

1.11 "Common Area": All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and

enjoyment of the Owners, including easements held by the Association for those purposes. The term shall include the Exclusive Common Area, as defined below, and may include entry features, landscape medians, cul de sacs, lakes, ponds, rivers, streams, wetlands, preservation areas, and Golf Courses, if any.

1.12 "Common Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles.

1.13 "Community Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors or any other entity which is given authority to determine the standard pursuant to this Declaration or the Bylaws, such as the Covenants Committee or the Modifications Committee.

1.14 "Contiguous Property": Any property of which a portion adjoins or borders Sun City Hilton Head or which is separated from Sun City Hilton Head only by roads, rights-of-way, waterways, or natural boundaries.

1.15 "Covenants Committee": The entity responsible for hearings regarding violations of certain provisions of this Declaration pursuant to Article XVII.

1.16 "Covenant to Share Costs": Any declaration of easements and covenant to share costs executed by Declarant and recorded in the Register of Deeds for Beaufort or Jasper County which creates easements for the benefit of the Association and the present and future owners of the real property subject thereto and which obligates the Association and such owners to share the costs of maintaining certain property described therein.

1.17 "Declarant": Del Webb Communities, Inc., an Arizona corporation, or any successor, successor in title, or assign of Del Webb Communities, Inc., who has or takes title to any Contiguous Property or to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or resale in the ordinary course of business and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.18 "Design Guidelines": The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, adopted pursuant to Article XI and applicable to the Properties.

1.19 "Dwelling Unit": Any building or structure or portion of a building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family, including by way of illustration but not limitation, condominium units, patio or zero lot line homes, and single family detached houses.

1.20 "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Section 2.4.

1.21 "Golf Course": Any parcel of land adjacent to or within the Properties developed by the Declarant or any affiliate or designee of the Declarant (a) which is owned by the Association or which is a Private Amenity, and (b) which is operated as a golf course, and all related and supporting facilities and improvements operated and/or maintained in connection with or incidental to such golf course.

1.22 "Governing Documents" The Declaration and any Supplemental Declaration, the Bylaws, rules and regulations, the Design Guidelines, the Use Restrictions, or any document authorized pursuant to any of them, as amended from time to time.

1.23 "Home Owner": An Owner other than the Declarant.

1.24 "Jasper County Development Agreement": The Development Agreement between Del Webb Communities, Inc., and the County of Jasper, South Carolina, dated July 28, 1994, and recorded at Deed Book 136, Page 107, et seq., Register of Deeds of Jasper County, South Carolina and by this reference incorporated herein, as amended from time to time.

1.25 "Lot": A contiguous portion of the Properties, whether improved or unimproved, other than Common Area, common property of any Neighborhood, and property dedicated to the public, which may be independently owned and conveyed and which is intended to be developed, used, and occupied with an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, thereon. The term shall include, by way of illustration but not limitation, condominium units, cluster homes, patio or zero lot line homes, and single family detached houses on separately platted lots, as well as vacant land intended for development as such. In the case of any structure containing multiple Dwelling Units, each Dwelling Unit shall be deemed to be a separate Lot. Prior to recordation of a subdivision plat, a parcel of vacant land or land on which improvements are under construction shall be deemed to contain the number of Lots designated for residential use for such parcel on the applicable preliminary plat or site plan approved by Declarant, whichever is more current. Until a preliminary plat or site plan has been approved, such parcel shall contain the number of Lots set by Declarant in conformance with the Master Plan.

1.26 "Master Plan": The master plan for the development of Sun City Hilton Head filed with Beaufort County and Jasper County, South Carolina, as it may be amended, updated, or supplemented from time to time, which plan includes the property described on Exhibit "A" and a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. The Master Plan may also include subsequent plans approved by Beaufort County or Jasper County, South Carolina for the development of all or a portion of the property described on Exhibit "B" and/or any Contiguous Property which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration nor shall the exclusion of property from the Master Plan bar its later annexation in accordance with Article IX.

1.27 "Member": A Person entitled to membership in the Association.

1.28 "Modifications Committee": The entity responsible for review of certain modifications pursuant to Section 11.2.

1.29 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.30 "Mortgagee": A beneficiary or holder of a Mortgage.

1.31 "Neighborhood": Each separately designated residential area within the Properties, as more particularly described in Section 3.5. By way of illustration and not limitation, a townhome development, cluster home development, or single family detached housing development might each be designated as a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

1.32 "Neighborhood Assessments": Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 10.4.

1.33 "Neighborhood Committee": Any committee established by the Board for a Neighborhood. The Chairman of this Committee is the Neighborhood Representative.

1.34 "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve contribution, as the Board may specifically authorize and as may be authorized herein or in a Supplemental Declaration applicable to a Neighborhood.

1.35 "Neighborhood Representative": The representative elected by the Owners within each Neighborhood responsible for chairing the Neighborhood Committee, if formed and for casting the votes attributable to Lots in the Neighborhood on matters not requiring a vote of the Owners. The term Neighborhood Representative shall include Alternate Neighborhood Representatives acting in the absence of the Neighborhood Representative.

1.36 "New Member Fee": The fee charged pursuant to Section 3.2.

1.37 "Owner": One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation, in which case the equitable owner, not the Person holding an interest as security, will be considered the Owner.

1.38 "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.39 "Private Amenities": Real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, developed by the Declarant or any affiliate or designee of the Declarant, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis, use fee

basis, or otherwise. For example, any Golf Course owned and operated by Persons other than the Association shall be a Private Amenity.

1.40 "Properties": The real property described in Exhibits "A" and "B", attached hereto and incorporated herein by reference, together with such additional property subjected to this Declaration in accordance with Article IX.

1.41 "Qualifying Occupant": At least one individual who meets the age standards set forth in Section 2.3.

1.42 Register of Deeds" or "ROD": The Register of Deeds for Beaufort County or Jasper County, South Carolina, as applicable.

1.43 "Rules and Regulations": Rules and regulations adopted by the Board of Directors pursuant to the Governing Documents.

1.44 "Special Assessment": Assessments levied pursuant to Section 10.6.

1.45 "Sun City Hilton Head": The Properties as described in Section 1.40.

1.46 "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and identifies a Common Area within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.47 "Use Restrictions": The rules and use restrictions attached hereto as Exhibit "C" and incorporated by reference, as they may be modified, cancelled, limited or expanded under Article XII.

## ARTICLE II: PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Dwelling Units and their guests, rules limiting the number of occupants and guests who may use the Common Area, and rules designating certain portions of the Common Area as gardening plots for Owners and occupants and regulating the use thereof;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 4.2;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to governmental entities pursuant to Section 4.5;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any recreational facility situated upon the Common Area;

(g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Board to create, enter agreements with, grant easements to and transfer portions of the Common Area to tax-exempt organizations under Section 4.11;

(i) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(j) The rights of certain Owners to the exclusive use of those portions of the Common Area designated as Exclusive Common Areas, as more particularly described in Section 2.4; and

(k) The right of the Association to rent or lease any portion of any clubhouse and other recreational facilities within the Common Area on a short-term basis to any Owner for the exclusive use of such Owner and such Owner's family and guests.

## 2.2 Activity Cards.

(a) Issuance of Activity Cards. Ownership of each Lot shall entitle the Owner thereof to receive a maximum of two (2) activity or use privilege cards if such Owner complies with Section 2.3 (Age Restriction) and other obligations of the Owner under the Governing Documents. The cards for each Lot shall be renewed by the Association without charge, for such term and at such periods as shall be determined by the Board, provided that the Owner continues to comply with the obligations of the Owner under the Governing Documents, including, without limitation, payment of all assessments and other charges due to the Association. The Board may establish policies, limits and charges with regard to the issuance of additional cards and guest privilege cards.

(b) Assignment of Activity Cards. Subject to any rules and regulations establishing reasonable procedures and policies, any Owner may assign such Owner's right to receive activity or use privilege cards to residents of such Owner's Dwelling Unit; provided such residents are occupying such Dwelling Unit in compliance with Section 2.3 and other provisions of this Declaration. An Owner who leases such Owner's Lot shall be deemed to have assigned such rights to the lessee of such Lot, unless (i) the Board adopts rules and regulations permitting Owners to reserve such rights and (ii) such Owner provides the Board with written notice of such reservation which is consistent with the rules and regulations of the Board. If an Owner owns more than one (1) Lot, the Owner may request that additional cards be issued for the additional Lot(s), but any additional cards issued shall not be transferred, provided to, or used by anyone other than residents occupying Dwelling Units on Lots of such Owner in compliance with

Section 2.3. Any Owner may reassign the right to receive activity or use privilege cards by providing written notice to the Association of such reassignment and surrendering to the Association the previously assigned cards.

### 2.3 Age Restriction.

(a) General Rule. Sun City Hilton Head is intended to provide housing primarily for persons 55 years of age or older. The Properties shall be operated as an age restricted community in compliance with all applicable State and Federal laws. No person under 19 years of age shall reside in any Dwelling Unit for more than 90 days in any calendar year. Subject to the rights of Declarant with respect to designated Lots as described below, each Dwelling Unit, if occupied, shall be occupied by at least one individual 55 years of age or older ("Qualifying Occupant").

(b) Compliance with Applicable Law. The Properties shall be operated as an age restricted community in compliance with all applicable State and Federal laws. In the event that any Qualifying Occupant dies or otherwise ceases to reside in the Dwelling Unit, such person's co-habitants may own or occupy a Dwelling Unit and exercise all rights granted to occupants in this Declaration, including, but not limited to, those rights specified in Section 2.1, to the extent permitted by applicable State and Federal laws regarding age restricted communities; provided that at no time shall less than 80% of the Lots subject to this Declaration be occupied by single families where at least one member of the family is a Qualifying Occupant. The Board may establish policies and procedures from time to time as necessary to maintain its status as an age restricted community under State and Federal law.

(c) Limited Exception for Declarant. Notwithstanding the above, Declarant, and only Declarant, may sell or lease Lots in Neighborhoods it designates to Persons between the ages of 50 and 55, inclusive, and such Lots may be occupied by such Persons as Qualifying Occupants. Declarant's rights under this paragraph are limited by the requirement that, at all times, at least 80% of the Dwelling Units within the Properties shall be occupied by at least one Person 55 years of age or older, it being Declarant's intention that Sun City Hilton Head comply with all applicable state and federal Laws permitting the Properties to be developed and operated as an age-restricted community. Declarant shall designate those Neighborhoods within which the rights described in this paragraph exist in the Supplemental Declaration, or an amendment thereto, submitting such Property to the Declaration prior to the sale of any Lot in the Neighborhood to a Home Owner.

### 2.3 Exclusive Common Area.

(a) Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of Lots within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul de sacs, lakes, ponds, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed as a

Neighborhood Assessment against the Owners of Lots in those Neighborhoods to which the Exclusive Common Area is assigned.

(b) Exclusive Common Area shall be designated and the exclusive use thereof assigned in the deed conveying the Common Area to the Association or a the plat of survey relating to such Common Area. No such assignment shall preclude the Declarant from later reassigning and/or assigning use of the same Exclusive Common Area to additional Lots and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of Neighborhood Representatives representing a majority of the total Class "A" votes of the Association. As long as the Declarant owns any portion of the Properties or has the right to subject additional property pursuant to Section 9.1, any such assignment or reassignment shall also require the Declarant's consent.

(c) The Association may, upon approval by a majority vote of the Owners within such Neighborhood(s), permit Owners of Lots in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

### **ARTICLE III: ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS**

3.1 Function of Association; Rules and Regulations. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules and regulations regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents.

#### 3.2 Membership; New Member Fee; Notice of Title Transfer.

(a) Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established under Section 2.1, and the restrictions on voting set forth in Section 3.4 and in the Bylaws, 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 a corporation, partnership, limited liability company, trust or other legal entity may be exercised by any officer, director, partner, member, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

(b) New Member Fee; When Payable; By Whom. In addition to the administrative or transfer fee collected to cover administrative costs to the Association incurred relating to a lease or transfer, the Association shall collect a New Member Fee upon each transfer



of title to a Lot, other than exempt transfers as set forth herein in subsection (c), below. The New Member Fee (i) shall be paid by the grantor of title to the Lot unless the grantor and grantee agree in writing that that the New Member Fee shall be paid by the grantee, (ii) shall be payable at the closing of the transfer of title, and (iii) and, if unpaid at closing, shall be deemed a Benefitted Assessment secured by the Association's lien for assessments.

(c) Exemptions from New Member Fee. The following transfers of title to a Lot shall be exempt from the New Member Fee:

(i) By an Owner or Owners who had title as of February 28, 2007 (the date of the Fourth Amendment to the Declaration imposing the New Member Fee);

(ii) By or to the Declarant;

(iii) By a builder or developer holding title solely for purposes of development and resale;

(iv) By a co-Owner to any Person who was a co-Owner of such Lot as of February 28, 2007;

(v) To an Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(vi) To an entity wholly owned by the grantor of title or to a family trust created by such grantor for the direct benefit of the grantor and/or his or her spouse and/or heirs; provided, upon any subsequent transfer of an ownership interest in such entity, a New Member Fee shall be payable;

(vii) To an institutional lender as security for the performance of an obligation pursuant to a Mortgage; or

(viii) To any Owner separately required to pay a comparable New Member Fee pursuant to a recorded Supplemental Declaration on the Lot.

(d) Amount of New Member Fees. The New Member Fee shall equal one third (1/3) of one percent (1.0%) of the Gross Selling Price of the Lot, including all improvements, upgrades and premiums. The Gross Selling Price shall be the total cost to the transferee of title, including any portion of such cost funded by a lender, but excluding any transfer taxes or title fees payable by the transferee which are imposed by either Beaufort or Jasper County, if any.

(e) Use of New Member Fees. New Member Fees shall be used for purposes deemed by the Board to be beneficial in order to meet the general operating needs of the Association. By way of example and not limitation, New Member Fees may be used to assist the Association or one or more tax-exempt entities designated by the Board in funding operating or maintenance costs for recreational facilities, common areas, or open space preservation; or for other operating needs of the Association.

(f) Notice of Pending Transfer of Title. Each Owner transferring title to a Lot shall notify the Association's secretary or designee not less than seven (7) days prior to the scheduled closing. Such notice shall include the street address of the Lot being transferred, the name of the grantor and grantee, the proposed date of title transfer and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Association, notwithstanding the transfer of title. The Association may require the payment of a reasonable administration or registration fee by the transferee.

3.3 Voting; Classes of Membership. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A" Members. Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 3.2. There shall be only one vote per Lot.

(b) Class "B" Member. The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to disapprove actions of the Board and committees, shall cease and be converted to Class "A" membership upon the earlier of the following:

(i) After 100% of the total number of Lots proposed by the Master Plan have certificates of occupancy issued thereon and such Lots have been conveyed to Home Owners;

(ii) December 31, 2020; provided that, in the event the Declarant annexes additional property pursuant to Section 9.1 at any time after December 31, 2015, this date shall automatically be extended for additional three (3) year periods for every 500 acres of property annexed, or any fraction thereof; or

(iii) When the Declarant so determines; provided, however, that such determination shall be evidenced by a written statement signed by the Declarant, evidencing the intent of the Declarant to permanently terminate the Class "B" Membership effective as of the date set forth in such statement, and such statement is recorded, by Declarant or with Declarant's express written consent, in the Register of Deeds for Beaufort County."

(c) Conversion to Class "A" Member. From and after the date the Class "B" membership ceases, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Lot it owns.

3.4 Exercise of Voting Rights.

(a) One Vote Per Lot. Except as otherwise specified in this Declaration or the Bylaws or otherwise required by law, the vote for each Lot owned by a Class "A" Member shall be exercised only by the Owner.

(b) Determining Who Has Right to Vote for Owner. The Bylaws shall define the procedure for determining which Person has the right to vote for an Owner.

(c) Votes by Neighborhood. Unless otherwise expressly stated herein, if the vote is on behalf of a specific Neighborhood, the Neighborhood Representative for such Neighborhood shall exercise the voting rights of such Neighborhood.

### 3.5 Neighborhoods, Neighborhood Representatives.

(a) Neighborhoods. Every Lot shall be located within a Neighborhood. The Lots within a particular Neighborhood may be subject to additional covenants. The Owners of Lots within any Neighborhood may elect a Neighborhood Committee, as described in the Bylaws, to represent the interests of such Owners.

(b) Special Services for Neighborhood. Any Neighborhood may, upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of Lots within the Neighborhood, request the Association to provide an increased level of service or special services for the benefit of Lots in such Neighborhood, the costs of which shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Article X.

(c) Assignment to Neighborhood. Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to an existing or newly created Neighborhood by name. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to reassign property to a Neighborhood, redesignate Neighborhood boundaries or combine two or more existing Neighborhoods. Thereafter, the Association may amend this Declaration or any Supplemental Declaration to reassign and/or redesignate Neighborhood boundaries; provided the Association may not combine two or more Neighborhoods without the consent of Owners of a majority of the Lots in the affected Neighborhoods.

(d) Election of Neighborhood Representative.

(i) One Neighborhood Representative and one Alternate Neighborhood Representative shall be elected in a meeting at which a quorum is present from each Neighborhood by a majority of the Voting Members entitled to cast Class "A" votes attributable to the lots in the Neighborhood in accordance with procedures adopted by the Board of Directors. The presence, in person or by proxy, of Voting Members representing at least twenty percent (20%) of the total Class "A" votes attributable to Lots in the Neighborhood shall constitute a quorum at any Neighborhood meeting. Any vote that can occur at a meeting may also be by written or electronic ballot without a meeting in accordance with procedures established by the Board.

(ii) Each Class "A Voting Member" shall be entitled to cast one equal vote for each Lot which it owns in the Neighborhood for each position. The candidate for each position who receives the greatest number of votes shall be elected to serve a term of two years. The Board shall establish procedures for nomination of Neighborhood

Representatives and all nominees shall complete such training and committee or other service requirements as established by the Board.

(e) Removal of Neighborhood Representative. Any Neighborhood Representative may be removed, with or without cause, upon the vote or written petition of Owners of Lots within the Neighborhood which such Neighborhood Representative represents following the same procedures by which such Neighborhood Representative was elected.

(f) Responsibilities of Neighborhood Representative. Except as otherwise specifically provided in the Governing Documents, each Neighborhood Representative shall chair the Neighborhood Committee and cast all votes which it represents as it, in its discretion, deems appropriate; provided, however, if a Neighborhood Representative represents a Neighborhood in which the Declarant owns one or more Lots, the Declarant may direct in writing to such Neighborhood Representative the manner in which its votes for such Lots are to be cast by the Neighborhood Representative. All other votes may be cast as the Neighborhood Representative deems appropriate in its sole discretion. The Board may adopt rules and regulations establishing procedures for Neighborhood meetings, electing Neighborhood Representatives, and polling members.

(g) Alternate Representative. An Alternate Neighborhood Representative shall act in the absence of the Neighborhood Representative for which it is the designated alternate. Alternate Neighborhood Representatives may attend meetings of the Neighborhood Representatives, but shall not be entitled to vote except in the absence of the Neighborhood Representative for which it is the designated alternate.

#### **ARTICLE IV: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant or any Person approved in writing by Declarant may convey to the Association improved or unimproved real estate located within the Properties, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including, but not limited to, restrictions governing the use of such property.

#### **4.2 Enforcement of Governing Documents.**

(a) Sanctioning Bodies; Types of Sanctions. The Board may impose sanctions for violations of the Governing Documents. The Covenants Committee, the Modifications Committee and other Association agents authorized in writing by the Board may also impose sanctions for violation of the applicable Governing Documents to the extent expressly authorized by this Declaration or authorized in writing by the Board. The Board may identify specific Governing Documents for which a designated Association agent may impose sanctions, may limit the type and extent of the sanctions such Association agent may impose and enforce, and may define the applicable procedure for imposing and enforcing such sanctions. Sanctions may include, without limitation:

(i) imposing reasonable monetary fines which, if unpaid in a timely manner, shall constitute a lien upon the Lot of the violator and a personal obligation of the Owner. If an occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Association agent imposing the fine, then the Owner shall be responsible for paying the fine;

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

(iii) suspending any Person's right to use any recreational facilities within the Common Area or use activity or use privilege cards issued by the Association; provided, however, nothing herein shall authorize the Board to limit ingress and egress by an Owner to or from the Lot of such Owner along recorded street rights of way;

(iv) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association; and

(v) levying Benefitted Assessments to cover costs incurred by the Association pursuant to Section 10.7.

(b) Remedies Cumulative; Attorneys' Fees. All remedies and sanctions authorized in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association is the prevailing party against an Owner (other than against the Declarant), it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs reasonably incurred in such action. The amount of such attorneys' fees and costs may be assessed as a Benefitted Assessment against the Lot(s) involved in the action.

(c) Waiver of Enforcement by Board. The Association shall not be obligated to take action to enforce any provision of the Governing Documents which the Board reasonably determines is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of any right of the Association to enforce such provision under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

4.3 Implied Rights; Board Authority. The Association may exercise any right or privilege expressly given to it by the Governing Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. The Association may, but shall not be obligated to, maintain or support activities within the Properties designed to promote the health, safety and welfare of Owners and occupants of any Lot. Except as otherwise specifically provided in this Declaration, the Bylaws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.4 Governmental Interests. So long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, the Declarant may designate sites within the Properties for fire, police and utility facilities, and parks, and other public facilities in accordance with the Master Plan and applicable laws. The sites may include Common Areas if otherwise permitted by the Master Plan.

4.5 Dedication of Common Areas. The Association may dedicate or grant easements over portions of the Common Areas to any local, state, or federal governmental entity, or any utility company..

4.6 Disclaimers of Liability.

(a) Notwithstanding anything contained within the Governing Documents, neither the Association, the Board, the management company of the Association, the Declarant, nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Properties, including all recreational facilities, if any.

(b) Neither the Association, the Board, the management company of the Association, the Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub stations adjacent to, near, over, or on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub stations and further acknowledges that the Association, the Board, the management company of the Association, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub stations.

(c) Each Owner and occupant, and each tenant, guest and invitee of any Owner or occupant acknowledges that the Properties are located in the vicinity of wetland and swamp areas and that such areas may contain an abundance of wildlife, including, without limitation, deer, skunks, opossums, snakes, alligators, reptiles, rodents and pests. Neither the Association, the Board, the management company of the Association, the Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant (i) assumes all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and (ii) acknowledges that the Association, the Board, the management company of the Association, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

(d) No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the Board, the management company of the Association, the Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

#### 4.7 Security; No Guarantee of Security.

(a) The Association may maintain or support certain activities within the Properties intended to make the Properties safer than they otherwise might be; provided, however, that the Association shall not be obligated to maintain or support such activities..

(b) Neither the Association, the management company of the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, the management company of the Association, the Declarant, nor any successor Declarant shall be held liable for any loss or damage for failure to provide adequate security or ineffectiveness of security measures undertaken.

(c) All Owners and occupants of any Lot, and all tenants, guests, and invitees of Owners or occupants, acknowledge that the Association, the Board, the management company of the Association, the Declarant, any successor Declarant, and the Covenants and Modifications Committees do not represent or warrant that any entry gate, patrolling of the Properties, neighborhood watch group or volunteer security patrol, or any security system designated by or installed according to guidelines established by the Declarant or the Association may not be compromised or circumvented; nor that any entry gate, patrolling of the Properties, neighborhood watch group or volunteer security patrol, or any security systems will prevent loss by burglary, theft, hold up, or otherwise; nor that entry gate, patrolling of the Properties, neighborhood watch group or volunteer security patrol, or any security systems will in all cases provide the detection or protection for which the system is designed or intended.

(d) All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, the management company of the Association, the Declarant, or any successor declarant are not insurers.

(e) All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, the management company of the Association, the Declarant, or any successor declarant have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Properties, neighborhood watch group or volunteer security patrol, or any security systems recommended or installed or any security measures undertaken within the Properties.

4.8 Association Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be

authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. Except as provided in Section 4.9, the Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

#### 4.9 Change of Use or Conveyance of Common Areas.

(a) During Class "B" Control Period. During the Class "B" Control Period, the Board, without the approval or consent of any Member or other Person (other than the Declarant if Declarant then owns any portion of the Properties or has the right to annex property pursuant to Section 9.1) may, upon adoption of a resolution stating that, in the Board's opinion a service provided by the Association or the then present use of a designated part of the Common Areas is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, terminate such service or sell, exchange, convey or abandon such Common Area, or change the use thereof (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use); provided that any such new use (i) shall be for the benefit of the Owners, (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas, and (iii) shall be consistent with the then effective Master Plan.

(b) After Class "B" Control Period. After the Class "B" Control Period, the Board may take an action authorized by (a), above, provided that such action shall also be (i) approved by Neighborhood Representatives representing a majority of the Class "A" votes cast at a meeting of Neighborhood Representatives duly called for such purpose, or by ballot in lieu of a meeting, and (ii) if Declarant then owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, approved in writing by the Declarant. If, however, the Board determines, and a resolution of the Board states that any transaction involving the disposition or exchange of Common Area will not have an adverse effect on the Association and the Owners, the Board may, in lieu of calling a meeting pursuant to the preceding sentence, give notice to all Owners of the proposed transaction and of any right to object thereto and the Board will have no obligation to call a meeting of the Neighborhood Representatives except upon receipt of a petition of Neighborhood Representatives representing at least twenty (20%) percent of the Class "A" votes. If no such petition is received within 30 days after the giving of such notice, the transaction shall be deemed approved by the Neighborhood Representatives and the meeting of the Neighborhood Representatives shall not be necessary.

4.10 View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Neither the Declarant nor the Association shall have the



obligation to prune or thin trees or other landscaping except as set forth in Article V. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.11 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including but not limited to organizations that provide facilities or services designed to meet the physical or social needs of older persons, for the benefit of the Properties, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

#### ARTICLE V: MAINTENANCE

5.1 Area of Common Responsibility. Except as otherwise expressly provided in this Declaration, the Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all Common Area;
- (b) all private streets, including any repairs thereto, situated in the Common Area;
- (c) all walls and fences constructed by Declarant on any Lots which serve as perimeter walls for the Properties or which separate any Lot from Common Area or a Private Amenity (allocation of responsibility for the maintenance and repair of party walls and party fences is set forth in Section 5.10);
- (d) to the extent required by law, or required by encroachment or other permits between the applicable governmental entity and the Association or the Declarant, or authorized by the Board pursuant to such permits, landscaping, sidewalks, street lights, irrigation systems, and signage within public rights of way abutting the Properties, including, but not limited, to Highways 170 and 278;
- (e) to the extent required by any easement, or authorized by the Board pursuant to any easement, landscaping and other flora within any public utility easements and scenic easements within the Common Area;
- (f) any additional property included within the Area of Common Responsibility as may be required by the Governing Documents, any plat of any portion of the Properties approved by the Declarant, or any contract or agreement for maintenance thereof entered into by the Association; and

(g) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from the Declarant to the Association, until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

5.2 Wildlife. The Association shall also have the right and power, but not the obligation, to take such actions, in accordance with appropriate law, and adopt such rules and regulations as may be necessary for control, relocation, management, and extermination of wildlife, including but not limited to, deer, pigs, skunks, opossums, snakes, alligators, reptiles, rodents, and pests, within the Area of Common Responsibility.

5.3 Wetlands. Areas within the Properties designated as "wetlands" on a recorded plat or in a recorded covenant shall be maintained in accordance with the recorded restrictions or covenants relating to such wetlands. Unless expressly authorized by the Board or required by law, such areas shall be generally left in a natural state and no maintenance by the Association shall be required unless the Board determines that a condition in the wetland has had or may have a material adverse impact on Properties outside the wetland. If approved by the Board, the Association may maintain drainage ditches, retention and detention structures, boardwalks, fishing docks, and crab docks over, around, and in such wetlands. Notwithstanding anything contained in this paragraph, the Declarant, its successors, assigns, affiliates and designees may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

5.4 Neighborhood Areas. The Association may assume maintenance responsibility for property within any Neighborhood in addition to any property which the Association is obligated to maintain by this Declaration or any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of such maintenance shall be assessed against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.5 Other Property. The Association may also maintain and improve other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

5.6 Maintenance a Common Expense. Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment against the Lots within the Neighborhood(s) to which the Exclusive Common Areas are assigned.

5.7 Owner's Maintenance Responsibility.

(a) Each Owner shall maintain such Owner's Lot, Dwelling Unit, and all other structures, parking areas, landscaping, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable Design Guidelines and covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. Unless otherwise provided in a Supplemental Declaration or other declaration of covenants applicable to such Lot, or otherwise approved in writing by the Board, and for the purpose of this section only, a "Lot" shall include the area located within the road right-of-way adjacent to the Lot and between the perimeter boundary of the Dwelling Unit and the closest edge of the paved portion of the roadway located thereon (the "Lot Border"); provided, however, the maintenance responsibility of the Owner within the Lot Border shall be limited to grounds cleanup, mowing of grass, weeding, landscaping, pruning of shrubs and trees, mailboxes, and driveway connection.

(b) In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required because of what is reasonably perceived to be an emergency.

#### 5.8 Neighborhood's Responsibility.

(a) Upon Board resolution, the Owners of Lots within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right of way and open space between the Lots within the Neighborhood and adjacent public roads and private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

(b) All maintenance required under this Declaration or any additional covenants or agreements shall be performed consistent with the Community-Wide Standard. If any Neighborhood fails to perform such maintenance, the Association may perform it and assess the costs against all Lots within such Neighborhood as provided in Section 10.7.

#### 5.9 Standard of Performance.

(a) Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard and applicable Design Guidelines. All maintenance shall be performed in a manner consistent with the Community-Wide Standard, applicable Design Guidelines, and all applicable covenants, as determined by the Board.

(b) Portions of the Properties are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Properties. The Board may establish a higher Community-Wide Standard for such areas and require additional maintenance for such areas to reflect the nature of such property.

(c) Notwithstanding anything to the contrary contained herein, neither the Association nor any Owner, shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own (except for a Lot Owner in the Lot Border as defined in Section 5.7[a]), and, if owned (or, for a Lot Owner, if in the Lot Border), only to the extent that, such Person has been negligent in the performance of its maintenance responsibilities.

#### 5.10 Party Walls and Party Fences.

(a) Definition. Each wall and fence built as a part of the original construction on the Lots and meeting the following criteria shall constitute a "party wall" or "party fence" (herein referred to as "party structures"):

(i) any part of which is built upon or straddling the boundary line between two adjoining Lots; or

(ii) which is constructed within four feet of the boundary line between adjoining Lots, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Lot; or

(iii) which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots, regardless of whether constructed wholly within the boundaries of one Lot.

(b) Ownership. The Owners of the property served by a party structure (the "Adjoining Owners") shall own that portion of the party structure lying within the boundaries of their respective Lots and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the adjoining Lot. Each Adjoining Owner shall be responsible for maintaining a property insurance policy on that portion of any party structure lying within the boundaries of such Owner's Lot, as more particularly provided in Section 6.3, and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

(c) Repair and Maintenance. The responsibility for the repair and maintenance of party structures and the reasonable cost thereof shall be shared equally by the Adjoining Owners. Adjoining Owners shall provide reasonable access to such party structures for the purposes of repair or maintenance. To the extent damage to a party structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, any Adjoining Owner may restore it. If other Adjoining Owners thereafter use the party structure, they shall contribute to the restoration cost in equal shares without prejudice to any Owners' right to larger contributions from other users under any rule of law. Any Owner's right to contribution from another Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE VI: INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, if reasonably available for reasonable premiums, the following types of insurance:

(a) Blanket property insurance covering risks of physical loss on an "all-risk" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at a reasonable cost, then "broad form named perils" coverage may be substituted. In addition, the Association shall, if so specified in a Supplemental Declaration applicable to a particular Neighborhood, obtain and continue in effect property insurance covering risks of physical loss on an "all risk" basis for all insurable improvements in the Neighborhood. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. Costs of property insurance obtained by the Association on the behalf of a Neighborhood shall be charged to the Owners of Lots within the benefitted Neighborhood as a Neighborhood Assessment;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least \$1,000,000.00 per occurrence and at least \$2,000,000.00 aggregate occurrences, with respect to bodily injury, personal injury, and property damage;

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

(d) Directors and officers liability insurance or equivalent association liability insurance;

(e) Commercial crime insurance, including employee fidelity insurance, in an amount determined by its best business judgment, which, for employee fidelity insurance shall not be less than one sixth of the annual Base Assessments on all Lots plus reserves typically on hand. Such commercial crime insurance shall cover funds held by the Association's management company, unless such management company's insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(f) Such additional insurance, including but not limited to flood, earthquake and hurricane insurance, as the Board in its best business judgment determines advisable.

6.2 Private Amenity Insurance. The Association shall have no insurance responsibility for any portion of any Private Amenity.

### 6.3 Association Policy Requirements.

(a) **Periodic Review.** Prior to the renewal of any insurance policy and at least annually, the Association shall arrange for a review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Beaufort and Jasper Counties, South Carolina, area.

(b) **Deductibles.** The policies may contain a reasonable deductible as determined by the Board and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Section 10.7.

(c) **General Policy Criteria.** To the extent consistent with the conditions set forth in the first sentence of Section 6.1, all insurance coverage obtained by the Board shall:

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

(ii) Be written in the name of the Association. Policies on the Common Area shall be for the benefit of the Association and its Members. Insurance coverage secured on behalf of a Neighborhood shall be for the benefit of the Owners of Lots within the Neighborhood, and their Mortgagees, as their interests may appear;

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

(iv) Include an agreed amount endorsement if the policy contains a co insurance clause; and

(v) Include replacement cost coverage.

(vi) Include a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager and the Owners;

(vii) Include a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(viii) Include an endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners;

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

(x) Include a cross liability provision;

(xi) Acknowledge the exclusive authority of the Board to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and

(xii) Include a provision identifying the Lot Owners as additional insureds under the policy.

6.4 Premiums a Common Expense. Except as otherwise provided in Section 6.1 with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board reasonably determines that other treatment of the premiums is more appropriate.

6.5 Owner's Insurance. Each Owner shall carry property insurance for the full insurable replacement cost on its Lot(s), less a reasonable deductible, unless either the Neighborhood in which the Lot is located or the Association carries such insurance (which they are not obligated to do hereunder). Such property insurance shall include windstorm and hail coverage, and, if full insurable replacement cost is not reasonably available for such coverage, actual cash value may be substituted.

6.6 Action by Owner After Damage. In the event of damage to or destruction of the Dwelling Unit or any other structures on an Owner's Lot, such Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community Wide Standard and applicable Design Guidelines. The Owner shall pay any costs which are not covered by insurance proceeds.

6.7 Additional Covenants. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and the standards for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

6.8 Damage and Destruction.

(a) Filing Association Claims. Promptly after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain a reliable and detailed estimate of the cost of repair or reconstruction. Repair or reconstruction, as used in this Section, means 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.

(b) Repair of Damage. Any damage to or destruction of the Common Area or the common property of any Neighborhood shall be repaired or reconstructed unless the Board and the Declarant, as long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, decides not to repair or reconstruct after receipt of any estimate of the cost of repair or reconstruction desired by the Board or Declarant. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood shall be repaired or reconstructed.

(c) Action If No Repair. If determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.9 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction of Common Area or the common property of any Neighborhood, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account for disbursement as may be determined by the Board of Directors.

6.10 Inadequate Insurance Proceeds for Needed Repair. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may levy Benefitted Assessments adequate to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage.

## **ARTICLE VII: NO PARTITION OF COMMON AREA**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

## **ARTICLE VIII: CONDEMNATION**

8.1 Notice of Condemnation of Common Area. Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, reasonable efforts shall be made to notify Owners thereof in accordance with Section 19.10.. The Board may convey Common Area under threat of condemnation only if approved in writing by (i) the Board and (ii) the Declarant, as long as Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1.



8.2 Condemnation Awards. The award made for a taking shall be payable to the Association as trustee for all Owners and shall be disbursed as follows:

(a) Condemnation of Improvements. If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless the Board and the Declarant, so long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, decides not to repair or reconstruct after receipt of any estimate of the cost of restoration or replacement desired by the Board or Declarant. No Mortgagee shall have the right to participate in such determination.

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

#### ARTICLE IX: ANNEXATION AND WITHDRAWAL OF PROPERTY

##### 9.1 Annexation Without Approval of Membership.

(a) Until all property described in Exhibit "B" has been subjected to this Declaration or 30 years after recordation of this Declaration, whichever is earlier, Declarant may unilaterally subject to the provisions of this Declaration all or portions of the real property described in Exhibit "B".

(b) In addition, until 40 years after recordation of this Declaration, Declarant may unilaterally subject any Contiguous Property to the provisions of this Declaration.

(c) Declarant may transfer or assign this right to annex property, provided that (i) the transferee or assignee is the developer of at least a portion of the real property described in either Exhibits "A" or "B" or any Contiguous Property and (ii) such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" or any Contiguous Property in any manner whatsoever.

(d) Such annexation shall be accomplished by filing a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing of record of such Supplemental Declaration unless otherwise provided therein.

##### 9.2 Other Annexation With Approval of Membership.

(a) The Association or the Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Neighborhood Representatives representing at least two-thirds (2/3) of the total Class "A" votes of the Association represented at a meeting duly called for such purpose, and the

consent of the Declarant so long as Declarant owns property subject to this Declaration or has the right to annex property pursuant to Section 9.1.

(b) Such annexation shall be accomplished by filing a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, the owner of the annexed property, and, if applicable, the Declarant. Any such annexation shall be effective upon the filing of record of such Supplemental Declaration unless otherwise provided therein.

9.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

9.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed of record either concurrently with or after the annexation of the subject property and shall require the written consent of the Declarant and the owner(s) of such property, if other than the Declarant.

9.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1.

## ARTICLE X: ASSESSMENTS

### 10.1 Creation of Assessments.

(a) Types of Assessments. The Association may levy assessments against each Lot as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Lots within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.6; and (d) Benefitted Assessments as described in Section 10.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments. (Also see "New Member Fees" in Section 3.2, above.)

(b) Liability for Assessments; Mortgagees All assessments, together with interest from the due date of such assessment at a rate determined by the Association (not to

exceed the highest rate allowed by South Carolina law), fines, fees, late charges, and costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is levied until paid, as more particularly provided in Section 10.9. Each such assessment, together with interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. To the extent required by South Carolina Code Section 27-31-210 (as it may be amended from time to time), if a mortgagee of any mortgage of record or other purchaser of a Lot obtains title at a foreclosure sale, the Person acquiring title shall not be liable for assessments allocable to the Lot that accrued after the date of recording of the mortgage and prior to the acquisition of title at the foreclosure sale.

(c) **Payment of Assessments.** Assessments shall be paid in such manner and by such dates as the Board may establish. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

(d) **Statements Regarding Assessment Status.** The Association shall, upon request by an Owner, furnish to any Owner a certificate in writing signed by an officer or expressly authorized agent of the Association setting forth whether assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(e) **No Exemption.** No Owner may exempt such Owner from liability for assessments by nonuse of Common Area, abandonment of such Owner's Lot or Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by the Association or Board.

#### 10.2 Declarant's Obligation for Assessments.

(a) **Declarant's Option.** During the Class "B" Control Period, Declarant may annually elect either to pay assessments on all of its unsold Lots or pay the shortage for such fiscal year.

(b) **Shortage Defined.** The "shortage" shall be the difference between:

(i) the amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all other Lots, use fees, advances made by Declarant, and income from all other sources, and

(ii) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds. Calculation of the shortage shall be performed on a cash basis of accounting. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

(c) Declarant Services. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

### 10.3 Computation of Base Assessment.

(a) Preparing Budget. Not less than 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget shall include a line item for the establishment of a reserve fund in accordance with a budget separately prepared as provided in Section 10.5, but shall not include expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Neighborhood Representatives representing a majority of the total Class "A" votes of the Association.

(b) Determining Assessment. The Base Assessment shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Section 10.8 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

(c) Effective Date of Budget; Notice. The budget shall become effective unless disapproved (i) at a meeting by Neighborhood Representatives representing at least a majority of the total Class "A" votes of the Association, and (ii) as long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on written petition of the Neighborhood Representatives as provided for special meetings in the Bylaws, which petition must be presented to the Board within 30 days after notice of the assessments. Notice of assessments shall be posted in a prominent place within the Properties, or given in the manner set forth in Section 19.10, or given by any other reasonable method. If the proposed budget is disapproved or the Board fails for any reason to determine the

budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

(d) Maximum Increase in Base Assessment. Notwithstanding any provision to the contrary, the Board may not impose a Base Assessment that is more than 20% greater than the Base Assessment for the immediately preceding fiscal year without a majority vote of a quorum of Neighborhood Representatives, which vote may be at a meeting of the Association or by written ballot. This limitation shall not apply to Neighborhood Assessments, Special Assessments, Benefitted Assessments, or any user or membership fees imposed by the Association.

(e) Reduction in Base Assessment. The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.2), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be disclosed as a line item in the Common Expense budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

#### 10.4 Computation of Neighborhood Assessments.

(a) Preparing Neighborhood Budget. At least 30 days before the beginning of each fiscal year, the Board shall prepare a separate budget for each Neighborhood covering the estimated Neighborhood Expenses, if any, expected to be incurred on behalf of such Neighborhood during the coming year. The Board shall be entitled to set such budget only to the extent that (i) this Declaration, any Supplemental Declaration, or the Bylaws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment, or (ii) the Association expects to incur expenses to provide additional services for a Neighborhood. Any Neighborhood may request that additional services or an increased level of services be provided by the Association, and in such case, any approved additional costs shall be added to such budget. Such budget shall include a reserve contribution establishing a fund for repair and replacement of items maintained as a Neighborhood Expense, if any, within the Neighborhood.

(b) Obligation for Neighborhood Assessments. Neighborhood Expenses shall be levied as a Neighborhood Assessment against all Lots within the benefitted Neighborhood and shall be allocated equally among those Lots. If specified in the Supplemental Declaration applicable to such Neighborhood or if directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of Dwelling Units or other structures, insurance on Dwelling Units or other structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Lots in proportion to the benefit received. Such proportion shall be specified in the Supplemental Declaration applicable to such Neighborhood, or if not so specified, shall be approved by a majority of the Owners within the Neighborhood, and Declarant, as long as Declarant owns any property within such Neighborhood.

(c) **Effective Date.** Neighborhood budgets shall become effective unless disapproved by a majority vote of the Owners of Lots in the Neighborhood for which the Neighborhood budget applies. There shall be no obligation to call a meeting or written ballot for the purpose of considering the Neighborhood budget except on written petition of Owners representing at least 10% of the Class "A" votes in such Neighborhood, which petition must be presented to the Board within 30 days after notice of the Neighborhood Assessments. Notice of Neighborhood Assessment shall be provided to Owners in the Neighborhood in the manner set forth in Section 19.10; and provided, further, the right to disapprove shall apply only to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood. If the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine the Neighborhood budget for any year, then and until such time as such budget shall have been determined as provided herein, the Neighborhood budget in effect for the immediately preceding year shall continue for the current year.

#### 10.5 Reserve Budget.

(a) **Preparing Reserve Budget** The Board shall prepare, on an annual basis, reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in the Base Assessments and Neighborhood Assessments reserve contributions in amounts estimated to be sufficient to meet these projected needs, if any.

(b) **Use of Reserve Funds.** The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes and for each Neighborhood. So long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, neither the Association nor the Board shall adopt, modify, limit or expand such policies without the Declarant's prior written consent.

10.6 **Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if for Common Expenses, or against the Lots within any Neighborhood, if for Neighborhood Expenses. Such Special Assessments shall become effective unless (a) disapproved at a meeting of the Owners representing at least a majority of the total Class "A" votes allocated to Lots which will be subject to such Special Assessment, or (b) disapproved by the Declarant, as long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1. There shall be no obligation to call a meeting for the purpose of considering Special Assessments except on written petition of the Neighborhood Representatives as provided for special meetings in the Bylaws, which petition must be presented to the Board within 30 days after notice of the Special Assessment. Notice of Special Assessment shall be in the manner set forth in Section 19.10. 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.

#### 10.7 Benefitted Assessments.

(a) **Specific Lots.** The Board may levy Benefitted Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

(i) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(ii) to cover costs incurred in bringing the Lot into compliance with the provisions of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees, or guests. The Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefitted Assessment under this subsection; provided that no notice or hearing shall be required (a) if the Board reasonably determines that prompt imposition of the Benefitted Assessment is required in order to avoid or decrease possible injury to persons or damage to property, (b) for any Benefitted Assessment that does not exceed two hundred fifty dollars (\$250.00) for a single occurrence (or such greater amount as may be expressly approved in writing by the Board), or (c) for any matter identified in Section 17.2 of this Declaration as not constituting a "Claim".

(b) **Lots Within Specific Neighborhood.** The Association may also levy a Benefitted Assessment against the Lots within a Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives the Neighborhood Representative from such Neighborhood prior written notice and an opportunity for a hearing before levying any such assessment (but subject to the same exceptions as set forth in subsection 10.7(a)(ii), above).

10.8 **Date of Commencement of Assessments.** The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the date the Lot is made subject to this Declaration, or (b) the date the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base and Neighborhood Assessments against each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

#### 10.9 Lien for Assessments.

(a) Creation of Lien. Failure to pay any assessments authorized in this Article shall create a lien against the Lot against which they are levied until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of costs of the Association, including any fees, fines, interest at the maximum rate then allowed by law, charges, reasonable attorneys' fees, filing fees and court costs, and administrative costs. Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of a first Mortgage of record made in good faith and for value, as set forth in Section 10.1(b), above. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure. The lien shall be in addition to the right of the Association to pursue a claim against the Owner personally.

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

(c) Effect of Transfer or Foreclosure of Mortgage. The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to acquisition of title by the Mortgagee. . Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 10.8, including such acquirer, its successors and assigns.

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

10.11 Exempt Property. The following property subject to this Declaration shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

(a) all Common Area; (b) all property dedicated to and accepted by any governmental authority or public utility; and

(c) if approved by the Declarant and/or the Association, in their sole discretion, property owned by Persons exempt from income taxes under the Internal Revenue Code or South Carolina law if such property is used for purposes listed in the applicable Internal Revenue Code or South Carolina law provision. ARCHITECTURAL AND DESIGN STANDARDS



## 11.1 General.

(a) **Compliance with Governing Documents.** No improvements, additions or modifications (including, without limitation, staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Dwelling Unit, other structure or the Common Area (such as, without limitation, signs, antennae, clotheslines, playground equipment, pools, propane tanks, lighting, temporary structures, and artificial vegetation), planting or removal of landscaping materials, or installation or removal of an irrigation system shall take place except in compliance with this Article XI and the Governing Documents.

(b) **Exception for Certain Interior Improvements.** Any Owner may remodel, paint or redecorate the interior of structures, including the Dwelling Unit, on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to this Article and approval as set forth below.

(c) **Exception for Certain Repainting or Rebuilding of Exterior Improvements.** 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.

(d) **Exception for Declarant and Common Area Improvements.** This Article shall not apply to the activities of the Declarant or to improvements to the Common Area by or on behalf of the Association.

(e) **Declarant Approval of Amendments to Article.** This Article may not be amended without the Declarant's written consent so long as the Declarant owns any Private Amenity or any land subject to this Declaration or subject to annexation to this Declaration.

## 11.2 Architectural and Design Review.

(a) **New Construction.** Until 100% of the Properties have been developed and conveyed to Home Owners, the Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for original construction within the Properties. There shall be no surrender of this right prior to that time except in a written instrument executed by Declarant and recorded in the Register of Deeds of Jasper County or Beaufort County, South Carolina. Upon the expiration or surrender of such right by the Declarant, such authority shall be assigned to the Modifications Committee.

(b) **Modifications Committee; Fees, Deposits and Sanctions.**

(i) **Modifications Committee.** The Board shall establish a Modifications Committee which shall consist of at least three, but not more than nine, persons who shall be appointed and shall serve at the discretion of the Board. The Modifications Committee shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Lots or containing Dwelling Units and the adjacent open space. The Declarant, or after the termination of the Class

B Control Period, the Board shall have the right to veto any action taken by the Modifications Committee which the Declarant or Board determines, in its sole discretion, to be inconsistent with the Design Guidelines.

(ii) Fees. The Modifications Committee may establish and charge reasonable fees (i) for review of applications pursuant to (b)(i), above, or (ii) to provide reasonable funds to offset possible costs to the Association for failure of an applicant or its agent to perform in accordance with the Design Guidelines or the approved application (such as, without limitation, fees for cleanup of debris created by the work). The Modifications Committee may require such fees to be paid in full prior to review of any application. Such fees may include the costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association 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 Association's annual operating budget as a Common Expense.

(iii) Deposits. The Modifications Committee may require the deposit of reasonable sums to provide funds to offset possible costs to the Association for failure of an applicant or its agent to perform in accordance with the Design Guidelines or the approved application (such as, without limitation, fees for cleanup of debris created by the work). The Modifications Committee may require such fees to be paid in full prior to commencement of the approved work. Any deposits remaining after the completion of the approved work shall be promptly refunded to the applicant or the applicant's designee.

(iv) Fines and Other Sanctions. The Modifications Committee may establish and impose a schedule of monetary fines and other sanctions authorized by Section 4.2 for failure of an applicant to perform in accordance with this Article, the Design Guidelines or the approved application; provided, however, such schedule shall be approved in writing by the Board.

### 11.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare Design Guidelines which shall apply to all construction activities within the Properties, except as provided in Section 11.1. The Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Properties or has a right to annex any property pursuant to Section 9.1, or until the Declarant assigns this authority to the Association in writing, which assignment shall be revocable by the Declarant until such time as the assignment is set forth in a written instrument executed by Declarant and recorded in the Register of Deeds of Jasper County or Beaufort County, South Carolina. After assignment, the Association, through its Board of Directors, shall have the authority to amend the Design Guidelines. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, intended use, the Master Plan, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular

concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Modifications Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(b) Amendments to Design Guidelines. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to construction or modifications previously approved if such approved construction or modification has commenced. After the Declarant no longer has authority to amend the Design Guidelines as set forth in subsection (a), there shall be no limitation on the scope of amendments to the Design Guidelines. The Declarant or, upon assignment, the Association, through its Board of Directors, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

(c) Availability of Design Guidelines. The Association shall make the Design Guidelines available to Owners and builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, such Design Guidelines may be recorded in the Register of Deeds, 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.

(d) Variances from Design Guidelines. All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the Modifications Committee unless the Modifications Committee has granted a variance in writing pursuant to Section 11.6. So long as the Modifications Committee has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

#### 11.4 Review of Plans and Specifications.

(a) Mandatory Review of Plans. No activities within the scope of Section 11.1 shall commence on any Lot until an application for approval of the proposed work has been submitted to and approved by the Modifications Committee. Such application shall be in the form required by the Modifications Committee and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor and other features of proposed construction, as applicable. The Design Guidelines shall set forth the procedure and any additional information for submission of the Plans.

(b) Review Considerations. In reviewing each submission, the Modifications Committee may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The Modifications Committee may require relocation of native plants

within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Lot as a condition of approval of any submission.

(c) Time for Review. The Reviewing Body shall, within the period specified in the Design Guidelines, advise, in writing, the party submitting the Plans, at the address specified by such party at the time of submission or such revised address as is subsequently provided in writing to the Modifications Committee (the "Current Address") of (i) the approval of the submitted Plans, or (ii) if not approved, the portions of disapproved Plans which are deemed by the Modifications Committee to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, with a brief summary of the reason for such finding (which may include the need for more information). If the Modifications Committee fails to provide such written notice within the period specified in the Design Guidelines, approval of the Plans shall be deemed to have been given.

(d) Notice to Applicant. Notice to the party submitting the Plans required by (c), above, shall be deemed to have been given when (i) such notice, addressed to the address of party submitting the Plans as set forth on the application, is deposited, postage prepaid, with the U.S. Postal Service and sent by United States First Class mail, in which event delivery shall be deemed to occur three (3) days after the date of deposit with the U.S. Postal Service; or (ii) at the time of delivery to the submitting party at the address specified, or hand delivery to the submitting party or the agent of the submitting party at the office of the Modifications Committee.

(e) Start and Completion of Approved Construction. If construction does not commence on a project for which Plans have been approved within 120 days of the date shown on the notice of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Modifications Committee for reconsideration; provided, however, that the Modifications Committee may, in its sole discretion, grant a written extension of the time for commencement of construction. If construction is not completed on a project for which plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

11.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Modifications Committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, 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 proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.6 Variance. The Modifications Committee may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as, without limitation, unusual topography, natural obstructions, hardship or aesthetic or environmental considerations require, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties.

Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the Modifications Committee may not authorize variances without the written consent of the Declarant, as long as the Declarant owns any portion of the Properties or has a right to annex any property pursuant to Section 9.1.

11.7 Limitation of Liability for Application Decisions. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, the Board, nor the Modifications Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, nor the Modifications Committee, nor any member, director, officer, or authorized agent of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the foregoing shall be defended and indemnified by the Association as provided in this Declaration or the Bylaws.

11.8 Enforcement; Completion; Agents of Owner. Enforcement. Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Declarant, the Modifications Committee, or the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or promptly restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs of the Association, including any fees, fines, interest at the maximum rate then allowed by law, charges, reasonable attorneys' fees, filing fees and court costs, and administrative costs, may be assessed against the benefitted Lot and collected as a Benefitted Assessment unless otherwise prohibited in this Declaration.

(b) Completion Required. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Declarant or the Association shall, unless otherwise prohibited in this Declaration, be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefitted Assessment.

(c) Contractor As Agent of Owner. For the purposes of this Article, all acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association, its

officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

(d) Other Remedies. In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article.

## ARTICLE XII: USE RESTRICTIONS AND OTHER RULES

### 12.1 Plan of Development; Applicability; Effect.

(a) Plan of Development. Declarant has established a general plan of development for the Properties under this Declaration in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires in the community. The Properties are subject to Design Guidelines as set forth in Article XI and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Properties. The Governing Documents establish affirmative and negative covenants, easements, and restrictions on the Properties.

(b) Occupants and Lessees Bound. All provisions of the Governing Documents shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease or rental agreement for any Lot shall provide that the lessee and all occupants of the leased or rented Lot shall be bound by the terms of the Governing Documents.

### 12.2 Modification of Use Restrictions.

(a) Adoption by Board. Subject to the terms of this Article, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions set forth in Exhibit "C" limiting the rights of the Association, Members and others to use the Property. The Board shall notify Owners concerning any proposed modification, cancellation, limitation, creation of exceptions to, or expansion of the Use Restrictions at least five (5) business days prior to the Board meeting at which such action is to be considered. Such notice may be given in the manner set forth in Section 19.10(a). Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(b) Effective Date. Any such rules affecting Use Restrictions shall become effective on the date of adoption by the Board, or such later date as is determined by the Board, unless such are disapproved at a meeting or by written ballot of Owners representing at least a majority of the total Class "A" votes of the Association and, so long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, by the Declarant. The Board shall have no obligation to call a meeting or conduct a written ballot of the Owners to consider disapproval except upon receipt of a petition of the Owners as required for special meetings in the Bylaws. If a meeting to consider disapproval of a rule affecting Use Restrictions is properly requested by the Owners prior to the effective date of such rule, the rule shall not become effective until after such meeting is held.

(c) **Adoption by Owners.** Alternatively, the Owners, at a meeting or by written ballot duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions by a vote of Owners representing two-thirds (2/3) of the total Class "A" votes and, so long as the Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, the approval of the Declarant. Members shall have a reasonable opportunity to be heard prior to such action being taken.

(d) **Copy of Current Use Restrictions.** The Association shall provide, without cost, a copy of the Use Restrictions and other applicable rules then in effect to any requesting Member or Mortgagee.

(e) **No Modification of Other Governing Documents.** Nothing in this Article shall authorize the Board or the Owners to modify, repeal or expand the Declaration (with the exception of the Use Restrictions), the Bylaws, the Articles, or the Design Guidelines. Such documents may only be amended as expressly set forth in this Declaration or as provided in the applicable Governing Document.

**12.3 Owners' Acknowledgment.** All Owners and occupants are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Owners may add, delete, modify, create exceptions to, or amend the Use Restrictions in accordance with this Article and the Declaration. Each Owner by acceptance of a deed acknowledges and agrees that (i) the use and enjoyment and marketability of his or her property can be affected by this provision and (ii) the Use Restrictions and rules may change from time to time.

**12.4 Rights of Owners Regarding Use Restrictions.** Except as may be specifically authorized by this Declaration, neither the Board nor the Owners may adopt any rule in violation of the following provisions:

(a) **Equal Treatment.** Similarly situated Owners and occupants shall be treated similarly.

(b) **Speech.** The rights of Owners and occupants to display on their Lot political signs and symbols of the kinds normally displayed in or outside of residences located in single family residential neighborhoods in individually owned property shall not be abridged, except that the Association may adopt reasonable rules regarding the use of clearly offensive, lewd or pornographic wording or graphics, time of display, place, manner, size, location, and quality of construction for signs and symbols which are visible from outside the Lot.

(c) **Religious and Holiday Displays.** The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable rules regarding the time of display, place, manner, size, location, and quality of construction for displays which are visible from outside the Lot.

(d) **Household Composition.** Except as otherwise set forth in this Declaration (including, without limitation, Section 2.3), no rule shall interfere with the freedom of occupants

of Dwelling Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the Common Area.

(e) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that (i) create monetary costs for the Association or other Owners, or (ii) create a danger to the health or safety of occupants of other Dwelling Units, or (iii) generate excessive noise or traffic, or (iv) create unsightly conditions visible outside the Dwelling Unit, or (v) create an unreasonable source of annoyance, or (vi) are unlawful.

(f) Pets. The Association may adopt rules designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, unusual pets, and numbers and characteristics of pets; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents a threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep animals, birds, reptiles or poultry of any kind for commercial or business purposes.

(g) Allocation of Burdens and Benefits. Except as permitted by this Declaration, the allocation of financial burdens and rights to use Common Areas among the various Lots in existence at the time of acquisition of a Lot by an Owner shall not be changed to the detriment of such Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Areas as provided in Article IV, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, fail to comply with the Governing Documents, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(h) Alienation. No rule shall prohibit the leasing or transferring of any Lot, or require consent of the Association or Board for leasing or transferring of any Lot; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association. Except for the New Member Fee imposed by Section 3.2(b), the Association shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the administrative costs to the Association incurred relating to a lease or transfer.

(i) Declarant's Rights to Develop. No rule or action by the Association or Board shall impede Declarant's right to develop in accordance with the Master Plan, including, but not limited to, the rights of the Declarant as set forth in Article XV.



(j) Abridging Existing Rights. Unless otherwise required to be removed by law, any rule which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was lawfully being kept on the Properties prior to the adoption of such rule and which was in compliance with the Governing Documents in force at such time.

(k) Not Applicable to Declaration Amendments. The limitations in this Section 12.4 shall apply to rules only and shall not apply to amendments to this Declaration adopted in accordance with Section 19.2.

12.5 Adoption of Rules Not Involving Use Restrictions. Nothing in Sections 12.2 through 12.4 shall limit the authority of the Board to adopt, modify, cancel, limit, create exceptions to, or expand rules and regulations governing the interpretation, enforcement or implementation of provisions of the Governing Documents other than the Use Restrictions, if such rules and regulations are adopted in accordance with this Declaration and the Bylaws.

### ARTICLE XIII: EASEMENTS

13.1 Easements of Encroachment. Declarant reserves unto itself, so long as it owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of the Declarant.

13.2 Easements for Utilities, Etc. (a) Declarant reserves unto itself, so long as it owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, and grants to the Association an easement for the purpose of access and maintenance upon, across, over, and under all of the Properties to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to Sun City Hilton Head, subject to the limitations herein.

(b) This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(c) Declarant specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Dwelling Unit on any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

13.3 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B" and any Contiguous Property whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. If the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

#### 13.4 Easements for Private Amenities.

(a) The owner of any Private Amenity, its respective agents, successors and assigns, shall at all times have a right and non exclusive easement of access and use over those portions of the Common Areas reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair and replacement of such Private Amenity.

(b) The owner of any Private Amenity, its respective agents, successors and assigns, shall have a perpetual, non exclusive easement to the extent reasonably necessary, over the Properties for the installation, maintenance, repair, replacement and monitoring of utility lines, wires, drainage pipelines and pipelines serving all or portions of such Private Amenity.

(c) There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, and authorized users, a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Private Amenities. Without limiting the generality of the foregoing, members of the Private Amenities and guests and authorized users of the Private Amenities shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenities to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

(d) The owner of any Private Amenity, its respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over such portion of the Properties designated by the Declarant as a common maintenance area. Such common maintenance area may be used by the owner of any Private Amenity and the

Association for offices of maintenance personnel, for the storage of maintenance vehicles, parts, fuel and materials, and for vehicle maintenance.

### 13.5 Easements for Golf Courses.

(a) **Golf Ball Retrieval.** Every Lot and the Common Area and the common property of any Neighborhood shall be subject to an easement permitting golf balls unintentionally to come upon such Common Area, Lots or common property of a Neighborhood and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Lot to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Association or its Members (in their capacity as such); the management company of the Association; the owner of any Golf Course; its successors, successors-in-title to any Golf Course, or assigns; any successor Declarant; any builder or contractor (in their capacities as such); any officer, director, partner, employee or agent of any of the foregoing, or any officer or director of any partner.

(b) **Irrigation.** The Properties immediately adjacent to any Golf Course shall be subject to a non exclusive easement in favor of the owner of such course for overspray of water from any irrigation system serving such course. The owner of any Golf Course may use treated effluent in the irrigation of any Golf Course. Under no circumstances shall the Association or the owner of any Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) **Golf Balls in Water.** The owner of any Golf Course, its respective agents, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from such Golf Course.

(d) **Installation and Maintenance of Irrigation.** The owner of any Golf Course, its respective agents, successors and assigns, shall have a perpetual non exclusive easement, to the extent reasonably necessary, over the Properties, for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, serving all or portions of the Golf Course.

(e) **Storm Water Runoff.** The Properties shall be subject to an easement in favor of any Golf Course for natural drainage of storm water runoff from such Golf Course.

(f) **Golf Cart Paths.** The Properties shall be subject to an easement in favor of any Golf Course for golf cart paths serving such Golf Course. Under no circumstances shall the Association or the owner of any Golf Course, or their respective agents, successors, or assigns, be held liable for any damage or injury resulting from the exercise of this easement. The owner of any Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course shall at all times have a right and

non exclusive easement of access and use over the golf cart paths, if any, located within the Properties as reasonably necessary for the use and enjoyment of the Golf Course.

(g) Use of Roadways; Parking. There is hereby established for the benefit of the owner of any Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course, a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Golf Course. Without limiting the generality of the foregoing, members of the Golf Course and guests and authorized users of the Golf Course shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after tournaments and other similar functions held by or at the Golf Course to the extent that the Golf Course has insufficient parking to accommodate such vehicles.

13.6 Easements for Cross Drainage. Every Lot and the Common Area shall be subject to an easement for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property and the Board.

13.7 Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

#### 13.8 Easements for Maintenance and Enforcement.

(a) Maintenance and Inspections. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot to (a) perform its maintenance responsibilities under Article V, and (b) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) Removal for Violations. The Association also may enter a Lot to abate or remove any structure, thing or condition which violates the Governing Documents, using such measures as may be reasonably necessary. All costs incurred, including sanctions and reasonable attorneys' fees, may be assessed against the violator as a Benefitted Assessment.

(c) **Overspray and Treated Effluent.** The Properties shall be subject to a non-exclusive easement in favor of the Association for overspray of water from any irrigation system serving the Area of Common Responsibility. The Association may use treated effluent in the irrigation of any Area of Common Responsibility. The Association shall not be liable for any damage or injury resulting from such overspray or the exercise of this easement.

13.9 **Rights to Stormwater Runoff, Effluent and Water Reclamation.** Declarant hereby reserves for itself and its designees, including but not limited to the owner of any Private Amenity, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

#### 13.10 Easements for Lake and Pond Maintenance and Flood Water.

(a) **Irrigation; Retention Structures; Maintenance.** Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, rivers, streams, and wetlands located within the Area of Common Responsibility to (a) construct, maintain, and repair pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, rivers, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

(b) **Flooding, Filling and Drainage.** There is further reserved herein for the benefit of Declarant, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the Dwelling Units thereon) adjacent to or within one hundred feet of lake beds, ponds, rivers, streams and wetlands within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, rivers, streams, and wetlands within the Area of Common Responsibility subject to the approval of all appropriate regulatory bodies; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, rivers, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising their rights under this Section. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, hurricanes, or other natural occurrences.

### ARTICLE XIV: MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

14.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who (i) provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor; the name of the Owner granting such Mortgage as shown on the Mortgage, and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), and (ii) if such Mortgage is assigned by the Mortgagee to another institutional holder, insurer, or guarantor, notifies the Association of the name and address of such assignee, will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss known to the Association which materially and adversely affects a significant portion of the Properties or which materially and adversely affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency known to the Association in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other known violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification known to the Association of any insurance policy maintained by the Association insuring a Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder.

14.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.3 Notice to Association. Upon request, each Owner shall be obligated to promptly furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot, the name of the Mortgagor as shown on the Mortgage, and the applicable Mortgage number.

#### **ARTICLE XV: DECLARANT'S RIGHTS**

15.1 Transfer of Declarant's Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Register of Deeds of Jasper County and Beaufort County, South Carolina. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" or any Contiguous Property in any manner whatsoever.

15.2 Approval of Zoning or Master Plan Changes. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Properties, acknowledges awareness that Sun City Hilton Head is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties (other than within said Owner's or other Person's Neighborhood), or (b) changes in any conceptual or master plan for the Properties, including, but not limited to, the Master Plan (other than within said Owner's or other Person's Neighborhood); provided such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

15.3 Improvements to Common Area. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing such improvements to the Common Area as it deems appropriate in its sole discretion.

15.4 Activities on Common Area and Declarant's Property. So long as construction and initial sales of Lots shall continue or the Declarant owns any Private Amenity, the Declarant and its designees may maintain and carry on upon the Common Area and any property owned by the Declarant such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, sales offices, and storage of building materials. The Declarant and its designees shall have easements for access to and use of such facilities. The Declarant's or any designee's unilateral right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Areas by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

15.5 Vacation Villas. The Declarant may, in its discretion, construct residential improvements for temporary occupancy within or adjacent to the Properties and designate such improvements as "Vacation Villas." Such Vacation Villas shall not be considered Dwelling Units or Lots; provided however, such Vacation Villas shall be subject to assessments as provided in Article X. The owners and occupants of Vacation Villas shall not become Members of the Association by virtue of their ownership or occupancy of such Vacation Villas. The Declarant may transfer or lease such Vacation Villas and make Vacation Villas available for use by guests selected in its sole discretion. The Declarant hereby reserves for itself and its guests a non-exclusive easement for use, access, and enjoyment in and to the Common Area, including but not limited to any recreational facilities within the Common Area.

15.6 Conversion of Vacation Villas to Lots. The Declarant may convert a Vacation Villa located in the Properties to a Lot by filing a Supplemental Declaration in the Register of Deeds identifying such property as a Lot or Lots. Such Supplemental Declaration shall not require the consent of the Neighborhood Representatives, but shall require the consent of the Declarant and the owner of such property, if other than the Declarant. Any such conversion of a Vacation Villa to a Lot shall be effective upon the filing of record of such Supplemental Declaration unless otherwise provided therein.

15.7 Restrictions on Rules. So long as the Declarant owns any portion of the Properties or any Private Amenity or has the right to annex property pursuant to Section 9.1, the Association shall not, without the prior written approval of the Declarant, adopt any policy, rule or procedure that:

(a) Limits the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

(b) Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Areas or any property owned by any of them in promotional materials;

(c) Limits or prevents owners of new residential housing constructed by the Declarant, its successors, assigns and/or affiliates in Sun City Hilton Head from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the Bylaws;

(d) Discriminates against or singles out any group of Association members or prospective members or the Declarant [this provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, Special Assessments and other mandatory fees or charges) that discriminates against or singles out any group of Association members or the Declarant, but shall not prohibit the establishment of Benefitted Assessments];

(e) Impacts the ability of the Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Sun City Hilton Head, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete Sun City Hilton Head shall be expressly included in this provision. Easements that may be established by the Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

(f) Impacts the ability of the Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

15.8 Use of Common Area to Interfere with Declarant's Rights. The Association shall not exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Properties, the Exhibit "B" property or any Private Amenity) to interfere with the rights of the Declarant set forth in this Declaration or to impede access to any portion of the Properties, the Exhibit "B" property or any Private Amenity over the streets and other Common Areas within the Properties.

15.9 Declarant Approval Required for Recording of Covenants. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent for so long as the Declarant owns any portion of the Properties or any Private



Amenity or has the right to annex Property pursuant to Section 9.1. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

15.10 Amendment of Article Requires Declarant Consent. This Article shall not be amended without the prior written consent of the Declarant so long as the Declarant owns any portion of the Properties or any Private Amenity or has the right to annex property pursuant to Section 9.1. The rights contained in this Article shall terminate upon the earlier of (a) 40 years after the conveyance of the first Lot to a Home Owner, or (b) upon recording by Declarant of a written statement that all sales activity has ceased. Thereafter, the Declarant and its designees may continue to use the Common Areas for purposes stated in this Article only pursuant to a rental or lease agreement between the Declarant and/or such designee and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas.

#### **ARTICLE XVI: GOLF COURSES AND PRIVATE AMENITIES**

16.1 Right to Use. Access to and use of the Private Amenities are strictly subject to the rules and procedures of the Private Amenities, and no Person automatically gains any right to enter or to use those facilities by virtue of membership in the Association, ownership of a Lot, or occupancy of a Dwelling Unit. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

16.2 Change of Ownership or Operation Duties. The ownership or operational duties relating to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity, (c) the conveyance of a Private Amenity to one or more subsidiaries, affiliates, shareholders, employees, or independent contractors of the Declarant, or (d) the conveyance of a Private Amenity to the Association by the Declarant or any affiliate or designee of the Declarant. No consent of the Association or any Owner shall be required to effectuate such a transfer or conversion.

16.3 Future Conveyance to Association of Golf Course and Clubhouse.

(a) At a time to be determined in the Declarant's sole discretion, but not later than the termination of the Class "B" Control Period, the Declarant or, upon the direction of the Declarant, an affiliate of the Declarant, shall convey to the Association the initial 18 hole Golf Course and clubhouse to be located within the property described in Exhibits "A" and "B" and/or within any Contiguous Property. Such property shall be accepted by the Association, subject to any restrictions set forth in the deed of conveyance, including but not limited to, restrictions governing the use of such property.

(b) After such conveyance, the Association shall have the responsibility for the maintenance, operation, and insurance of such Golf Course in accordance with this Declaration; provided however, the Association shall not make any modification with regard to the maintenance, operation, or insurance of the Golf Course without the prior written consent of the Declarant, so long as the Declarant owns any portion of the Properties or any Private Amenity or has the right to annex property pursuant to Section 9.1.

16.4 No Representations Regarding Private Amenities. Except as provided herein, no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in conflict with this Section shall be effective without an amendment to this Declaration executed or joined into by the Declarant or the owner(s) of the Private Amenities which are the subject thereof.

#### 16.5 Assumption of Risk and Indemnification Relating to Golf Courses.

(a) Assumption of Risk. Each Owner, by its purchase of a Lot in the vicinity of any Golf Course, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any such Golf Course, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) use of effluent in the irrigation of the Golf Course, (e) reduction in privacy caused by constant golf traffic on the Golf Course or the removal or pruning of shrubbery or trees on the Golf Course, (f) errant golf balls and golf clubs, and (g) design of the Golf Course.

(b) Indemnification. Neither Declarant, the Association, Declarant's affiliates or agents, nor their officers, directors or employees shall be liable to any Owner or any other person claiming any loss of damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the Golf Course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents or the Association. The Owner shall indemnify and hold harmless Declarant, Declarant's affiliates and agents and the Association against any and all claims by Owner's visitors, tenants and others upon such Owner's Lot.

16.6 No Representation Regarding Views. Neither the Declarant, the Association nor the owner or operator of any Private Amenity or Golf Course guarantees or represents that any view over and across any Private Amenity or Golf Course from adjacent Lots will be preserved without impairment. No provision of this Declaration shall be deemed to create an obligation of the Association, the owner of any Private Amenity, nor the Declarant to prune or thin trees or other landscaping except as provided in Article V. The Association and the owner of any Private Amenity may, in their sole and absolute discretion, add trees and other landscaping to their Private Amenities and Golf Courses from time to time. In addition, the owner of any Golf Course may, in its sole and absolute discretion, change the location,

configuration, size and elevation of the tees, bunkers, fairways and greens on such Golf Course from time to time. Any such additions or changes to Golf Courses or Private Amenities may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any such addition or change to any Private Amenity may not adversely affect drainage flow across the Properties.

16.7 Notice of Modification of Adjacent or Visible Properties. Neither the Association nor the Modifications Committee, shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the owner of the Private Amenity or its authorized agent at least 15 days' prior written notice of its intent to approve or permit the same together with copies of the request and all other documents and information finally submitted in such regard. The owner of the Private Amenity or its authorized agent shall then have 15 days to approve or disapprove the proposal in writing delivered to the appropriate committee or association, stating in detail the reasons for any disapproval. The failure of the owner of the Private Amenity to respond to the notice within the 15 day period shall constitute a waiver of such owner's right to object to the matter. The foregoing shall not apply, however, to any construction, addition, alteration, change, or installation by the Declarant.

16.8 Limitations on Amendments Affecting Private Amenities. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefitting any Private Amenity, may be made without the written approval of the owner of the Private Amenities affected thereby. The Association shall have no power to promulgate Use Restrictions other than those set forth on Exhibit "C" which materially and adversely affect activities on or use of the Private Amenities without the prior written consent of the owners of the Private Amenities affected thereby. The foregoing shall not apply, however, to amendments made by the Declarant.

16.9 Cooperation. It is Declarant's intention that the Association and the Private Amenities shall cooperate to the maximum extent feasible in the operation of the Properties and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines.

#### **ARTICLE XVII: DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

17.1 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to be bound by this Article (collectively, "Bound Parties") shall encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of and potential delays involved in litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described as "Claims" in Section 17.2 shall be resolved using the procedures set forth in Section 17.3 in lieu of filing suit in any court.

17.2 Claims.

(a) Claims Defined. Unless specifically exempted under paragraph (b) below, all claims, grievances or disputes ("Claims") arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents, shall be subject to the provisions of Section 17.3.

(b) Matters Not Constituting Claims. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 17.3:

(i) any suit, action or proceeding at law or in equity, including, without limitation, any temporary restraining order, injunction or other equitable relief (together, a "Legal Action") by the Association or the Declarant against any Bound Party to enforce the provisions of the Governing Documents, and any counterclaims in response thereto;

(ii) any Legal Action by an Owner to challenge the actions of the Declarant, the Association, the Covenants Committee, the Modifications Committee, or any other agent of the Association with respect to approval, disapproval, application or enforcement of the provisions of the Governing Documents, and any counterclaims in response thereto.

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

(v) any Legal Action in which any indispensable party is not a Bound Party; and

(vi) any Legal Action which otherwise would be barred by any applicable statute of limitations or would be likely to be barred by any applicable statute of limitations if processed as a Claim

(c) Claims by Consent of Parties. With the written consent of all parties thereto, any matter which is not a Claim, as set forth in subsection (b), may be submitted to the alternative dispute resolution procedures set forth in Section 17.3, or specific portions of the alternative dispute resolution procedures set forth in Section 17.3.

### 17.3 Mandatory Alternative Dispute Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing in accordance with Section 19.10(b) (the "Notice"), stating plainly and concisely:

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

(ii) the basis of the Claim (i.e. the specific authority out of which the Claim arises);

(iii) Claimant's proposed remedy; and

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

(b) Negotiation and Mediation.

(i) Good Faith Negotiation. The Parties shall make a 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 resolving the dispute by negotiation.

(ii) Mediation. If the Parties do not resolve the Claim within 30 days of the date of the Notice or such other period as may be expressly agreed upon in writing by the Parties ("Negotiation Termination Date"), any of the Parties shall have 30 days from the Negotiation Termination Date to submit the Claim to mediation under the auspices of an independent agency or court-approved arrangement providing dispute resolution services in the Beaufort County or Jasper County, South Carolina area.

(iii) Waiver of Claim. If no Party submits the Claim to mediation within 30 days after the Negotiation Termination Date, or the Claimant does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Documentation of Settlement. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not agree in writing to a settlement of the Claim within 30 days after the date the mediator acknowledges receipt of the Claim for mediation, or within such later time as is agreed upon in writing by the parties and the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Mediation Termination Notice"). The Mediation Termination Notice shall set forth that the Parties are at an impasse and the date that mediation was terminated ("Mediation Termination Date").

#### 17.4 Mandatory Binding Arbitration.

(a) Submission of Mediated Claim to Mandatory Arbitration. If a Mediation Termination Notice is issued and there is no written mediation settlement agreement, the Claimant shall have 30 additional days from the Mediation Termination Date to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator; provided that no Claim may be submitted which is excluded from mandatory arbitration pursuant to South Carolina law (an "Excluded Claim").

(b) Failure to Submit Arbitration Claim or Appear for Arbitration. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, any Claim other than an Excluded Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(c) Enforcement of Arbitration Award. This section 17.4 is an agreement to arbitrate and is enforceable under the applicable arbitration laws of the State of South Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of South Carolina.

17.5 Allocation of Costs of Mediation or Arbitration. Unless otherwise expressly agreed by the parties in writing, each Party to a mediation shall bear its own costs, including any attorneys' fees, and each Party shall share equally all charges by the mediator. Unless otherwise expressly agreed by the parties in writing or otherwise determined by the arbitrator(s), the costs of arbitration, including all filing fees and reasonable attorneys' fees of the prevailing party (as determined by the arbitrator), shall be paid by the Party that is not the prevailing party.

17.6 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any written mediation settlement agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 17.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

#### **ARTICLE XVIII: COMPLIANCE WITH COUNTY REQUIREMENTS**

18.1 General. The purpose of this Article is to provide the Association and the Owners with notice of several of the requirements and obligations imposed on the Association and the Owners by the Development Agreements. Nothing in this Article shall be construed to modify, limit or expand any requirement or obligation imposed by either the Jasper County Development Agreement or the Beaufort County Development Agreement nor to reduce, limit or eliminate any requirement or obligation otherwise imposed by the Governing Documents. In the event of conflict between any provision of the Development Agreements, as they may be amended, and any provision of this Article, those of this Article shall be subject and subordinate to those of the Development Agreement.

18.2 Beaufort County Development Agreement. The Beaufort County Development Agreement and this Section shall apply only to that portion of the Properties located within Beaufort County, South Carolina.

(a) Recycling Programs. The Board shall establish a recycling program and recycling center within the Properties consistent with Beaufort County, South Carolina, laws. In

the event of conflict between the standards of Beaufort County and South Carolina laws, the more restrictive standard shall apply. All occupants of Dwelling Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

(b) Effluent. To the extent effluent is not accepted by the Declarant or its designees, the Association shall accept treated effluent as required by the Beaufort-Jasper Water and Sewer Authority and may use such effluent in the irrigation of any Golf Course or areas of the Area of Common Responsibility that are isolated from Dwelling Units; provided however, if the treatment level of the effluent is tertiary, the Association may use such effluent on all portions of the Area of Common Responsibility.

(c) Wells. No wells that draw water from the Upper Floridian aquifer as a primary source of potable water or irrigation water shall be constructed, except wells constructed by the Declarant or the Association as a back-up source for temporary emergency use when no other source of fresh water is available.

(d) Water Conservation. All automatic sprinkler systems installed within the Properties shall include rain sensors and must be approved in strict compliance with Article XI.

(e) Mulching of Landscape Waste. Except as provided in the Beaufort County Development Agreement, all landscape waste produced within the Properties shall be mulched for use within the Properties. The Association shall provide facilities within the Properties for grinding landscape waste or contract to dispose of such waste through a private contractor who grinds waste into mulch outside of the Properties; provided, such contractor shall be obligated to return an equivalent tonnage of mulch to the Properties. Declarant hereby reserves for the Association all rights to such landscape waste and mulch produced within the Properties; provided however, the Board may require Owners to use a proportionate share of such mulch on their Lots. This provision shall not apply to waste produced during initial site preparation and clearing or during construction activities within the first five years of development. Such waste may be disposed of in any manner permitted by law and in compliance with the Design Guidelines.

(f) County Approval Required. This Section may not be amended to be inconsistent with the Beaufort County Development Agreement without the prior written consent of the appropriate governmental authority of Beaufort County, South Carolina.

18.3 Jasper County Development Agreement, Town of Hardeeville Agreement. The Jasper County Development Agreement, Town of Hardeeville Agreement and this Section shall apply only to that portion of the Properties located within Jasper County, South Carolina.

(a) Recycling Programs. If and to the extent required under Jasper County, South Carolina, law, the Board shall establish a recycling program and recycling center within the Properties. All occupants of Dwelling Units shall support such program by recycling, to the

extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

(b) Effluent. To the extent effluent is not accepted by the Declarant or its designees, the Association shall accept treated effluent as required by the Beaufort-Jasper Water and Sewer Authority and may use such effluent in the irrigation of any Golf Course or areas of the Area of Common Responsibility that are isolated from Dwelling Units; provided however, if the treatment level of the effluent is tertiary, the Association may use such effluent on all portions of the Area of Common Responsibility.

(c) Water Conservation. All automatic sprinkler systems installed within the Properties shall include rain sensors and must be approved in strict compliance with Article XI.

(d) County Approval Required. This Section may not be amended to the contrary without the prior written consent of the appropriate governmental authority of Jasper County, South Carolina.

#### ARTICLE XIX: GENERAL PROVISIONS

19.1 Term. This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 20 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

#### 19.2 Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration; or (vi) eliminate or clarify any inconsistency or ambiguity in the Declaration. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing. In addition, so long as Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, it may unilaterally amend this Declaration for any other



purpose, provided the amendment has no material adverse effect upon any right of any Owner. Thereafter and otherwise, this Declaration may be amended in accordance with Section 19.2(b).

(b) By Owners. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Neighborhood Representatives representing two-thirds (2/3) of the total Class "A" votes of the Association, and the written consent of the Declarant, so long as the Declarant owns any Private Amenity or any portion of the Properties or has the right to annex property pursuant to Section 9.1. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Register of Deeds of Jasper County or Beaufort County, South Carolina, whichever is earlier, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(d) Consent to Amendment by an Owner. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(e) Written Consent by Declarant Required for Certain Amendments. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege as long as the Declarant owns any Private Amenity or any portion of the Properties or has the right to annex property pursuant to Section 9.1.

19.3 Litigation by Association. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the Board, the affirmative vote or written consent, or any combination thereof, of Neighborhood Representatives representing a majority of the total Class "A" votes of the Association, and, during the Class "B" control period, the Declarant. The preceding sentence shall not apply, however, to judicial or administrative proceedings in which the Declarant is not a party and the rights of the Declarant are not at issue, and the proceeding involves either (a) an action brought by the Association to enforce the Governing Documents, (b) a challenge to ad valorem taxation, or (c) a defense or counterclaim by the Association in proceedings instituted against it. In the situations set forth in (a), (b) or (c), the Board shall determine the course of action for the Association.

19.4 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

19.5 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

19.6 Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, Bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

19.7 Use of the Words "Sun City Hilton Head". No Person shall use the words "Sun City Hilton Head" or any derivative, or any other term which Declarant may select as the name of this development or any component thereof, in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Sun City Hilton Head" in printed or promotional matter solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Sun City Hilton Head" in its name.

19.8 Del Webb Marks. Any use by the Association of names, marks or symbols of Del Webb Communities or any of its affiliates (collectively "Del Webb Marks") shall inure to the benefit of Del Webb Communities and shall be subject to Del Webb Communities' periodic review for quality control. The Association shall enter into license agreements with Del Webb Communities, terminable with or without cause and in a form specified by Del Webb Communities in its sole discretion, with respect to permissive use of certain Del Webb Marks. The Association shall not use any Del Webb Mark without Del Webb Communities prior written consent.

19.9 Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Owner(s).

19.10 Notices to Owners.

(a) General Notices. Unless otherwise expressly stated in writing or required by law, general notices to Owners by the Association, the Board, or the Declarant may be given by any reasonable method, such as, without limitation:

(i) U.S. Postal Service and sent by First Class Mail, addressed to the current address of such Owner on the records of the Association, postage prepaid, or

(ii) delivery to the current address of such Owner on the records of the Association, or

- (iii) publication in the Association's newsletter, publication in a newspaper, or
- (iv) publication on any internet website or television channel that provides reasonable notice to Owners, or
- (v) any other notice procedure authorized by South Carolina law.

(b) Notices to Specific Owners or Occupants. Unless otherwise expressly stated in writing or required by law, notices to specific Owners, lessees or occupants by the Association, the Board, or the Declarant, shall be deemed to have been given in any of the following ways:

- (i) when such notice, addressed to the current address of such Person on the records of the Association is deposited, postage prepaid, with the U.S. Postal Service and sent by First Class Mail, in which event delivery shall be deemed to occur three (3) calendar days after the date of deposit with the United States Postal Service, or
- (ii) when delivered to the current address of such Person on the records of the Association, or
- (iii) when sent, postage prepaid, by any recognized courier or delivery services which provides confirmation of delivery (such as, without limitation, Federal Express or UPS), or
- (iv) when sent by internet or facsimile, in which event notice shall be deemed to occur on the date of acknowledgment or response by the recipient, or such earlier date as is acknowledged by the recipient, or
- (v) when sent by any other notice procedure authorized by South Carolina law.

19.11 Acknowledgment by Owner of Waiver of Claims. **EACH OWNER (BY VIRTUE OF HIS, HER OR ITS ACCEPTANCE OF TITLE TO HIS, HER OR ITS LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS DECLARATION AND SHALL BE DEEMED TO HAVE WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION, THE MANAGEMENT COMPANY OF THE ASSOCIATION, THE DECLARANT AND ANY SUCCESSOR DECLARANT, THEIR DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS ARISING AS A RESULT OF IMPLEMENTATION OF THE GOVERNING DOCUMENTS.**

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*{Signature Page of Second Amended and Restated  
Declaration of Covenants, Conditions and Restrictions  
For Sun City Hilton Head}*

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amended and Restated Declaration this 22 day of March, 2012.

WITNESSES:

DEL WEBB COMMUNITIES, INC.

an Arizona corporation

By: \_\_\_\_\_

William Cutler, President

*Laurie Zimmerman*

*Savannah Thompson*

STATE OF SOUTH CAROLINA )

ACKNOWLEDGMENT

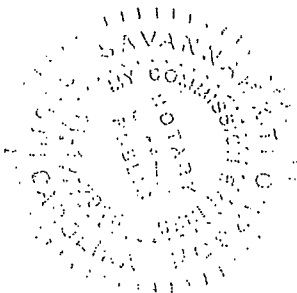
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COUNTY OF BEAUFORT )

I, the undersigned Notary Public, hereby certify that William Cutler, President of Del Webb Communities, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 22 day of March, 2012.

*Savannah Thompson*  
Print Name: Savannah Thompson  
Notary Public for South Carolina  
(SEAL)



**EXHIBIT "A": LAND INITIALLY SUBMITTED**

ALL THOSE CERTAIN TRACTS OR PARCELS OF LAND, lying and being in Beaufort County, South Carolina, and being more particularly shown and delineated on a plat prepared for Del Webb Communities, Inc. by Thomas & Hutton Engineering Co., dated April 21, 1994, last revised April 28, 1994, entitled "Boundary Survey Parcels 1a, 1b, 1c and 1d Sun City Hilton Head, Beaufort County, South Carolina," and being recorded on May 2, 1994, in Plat Book 49, Page 102 of the Register of Deeds of Beaufort County, South Carolina;

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, lying and being in Beaufort County, South Carolina, and being more particularly shown and delineated on a plat prepared for Del Webb Communities Inc. by Thomas & Hutton Engineering Co., dated May 16, 1994, entitled "Boundary Survey Parcel 2 Sun City Hilton Head, Beaufort County, South Carolina," and being recorded on June 1, 1994, in Plat Book 49, Page 155 of the Register of Deeds Conveyances of Beaufort County, South Carolina.

*(NOTE: It is intended that the property subject to the Declaration also includes any property not referenced above but which was made subject to the Declaration by any of the "Subsequent Amendments" referenced in the second "Whereas" clause of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head.)*

**EXHIBIT "B": LAND SUBJECT TO ANNEXATION**

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, lying and being in Beaufort and Jasper Counties, South Carolina, and being more particularly shown and delineated on a plat prepared for Del Webb Communities, Inc., by Thomas & Hutton Engineering Co., dated September 8, 1993, entitled "Boundary Plat for a portion of the Argent and Okatie Tracts," and being recorded on March 10, 1994, in Plat Book 48, at Page 188 of the Register of Deeds of Beaufort County, South Carolina, and in Plat Book 21, Page 46 of the Register of Deeds of Jasper County, South Carolina;

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, lying and being in Beaufort County, South Carolina, and being more particularly shown and delineated on Exhibit 1 to the Amendment to Memorandum of Option dated January 21, 1994, and being recorded on March 10, 1994, in Deed Book 689, Page 2173 of the Register of Deeds of Beaufort County, South Carolina, and in Deed Book 6, Page 1059 of the Register of Deeds of Jasper County, South Carolina;

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, lying and being in Beaufort County, South Carolina, and being more particularly shown and delineated on a plat prepared by Harold R. Johnson, Surveyor, dated May 20, 1960, entitled "Tract 4 of Bull Hill Plantation," and being recorded in Plat Book 12, at Page 55 of the Register of Deeds of Beaufort County, South Carolina and being identified as Parcel No. 1 as shown on the County Tax Map No. 28 for the Bluffton Township District, Beaufort County, South Carolina (PIN #R600-028-000-0001-0000);

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND lying and being Parcel No. 1 as shown on the County Tax Map No. 79 for Jasper County, South Carolina (PIN #794-00-01-01).

TOGETHER WITH:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND lying and being Parcel A2, in Jasper County, South Carolina, and being more particularly shown and delineated on a plat prepared for JCSC Properties, L.L.C. by Thomas & Hutton Engineering Co., dated May 6, 2010, entitled "A Recombination of Parcel A2 and Phase 1-B, Formerly Parcel A2, Phase 1-B and a Portion of Parcel C", and being recorded on July 1, 2011, in Plat Volume 32, Page 357 of the Register of Deeds of Jasper County, South Carolina.

*(NOTE: The property listed above includes some property which has been made subject to the Declaration by the "Subsequent Amendments" referenced in the second "Whereas" clause of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head.)*



## EXHIBIT "C": USE RESTRICTIONS

(a) General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association consistent with this Declaration and any Supplemental Declaration), subject to applicable laws. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Declaration and the Association shall have standing and the power to enforce such standards.

(b) Prohibited Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(i) Signs. Posting of signs of any kind except those required by law, including posters, circulars and billboards; provided, one professionally lettered "for rent" or "for sale" sign may be displayed on a Lot being offered for lease or for sale if in accordance with any restrictions in size, coloring, lettering and placement of signs as may be adopted by the Board and the Modifications Committee and if approved by the Modifications Committee;

(ii) Subdivision. Subdivision of a Lot into two or more Lots after a subdivision plat including such Lot has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Lot, except that the Declarant shall be permitted to subdivide or change the boundary lines of Lots which it owns;

(iii) Use of Bodies of Water. Active use of lakes, ponds, rivers, streams, wetlands, or other bodies of water within the Properties or within any Golf Course, except that the owners of any Golf Courses and their agents, successors and assigns, shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas and except that the Board may allow use of non-motorized boats subject to any rules and regulations it may establish. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, rivers, streams, wetlands or other bodies of water within or adjacent to the Properties;

(iv) Interval Ownership. Operation of a timesharing, fraction sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(v) Number of Occupants. Occupancy of a Dwelling Unit by more than two persons per bedroom in the Dwelling Unit. For the purposes of this provision, "occupancy" shall be defined as staying overnight in the Dwelling Unit more than 30 days in any six-month period;

(vi) Wildlife. Capturing, trapping or killing wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons or pets on the Properties;

(vii) Pets. Raising, breeding or keeping of animals, birds, reptiles or poultry of any kind, except that a total of two dogs and cats and a reasonable number, as determined by the



Board, of other usual and common household pets may be permitted on a Lot. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the Owners or occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet;

(viii) Alligators. Feeding, caring, taunting, or playing with any alligators on the Properties;

(ix) Destructive Activities. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or which result in unreasonable levels of sound or light pollution;

(x) Firearms and Explosives. Discharge of firearms or explosives within the Properties. The term "firearms" includes "B B" guns, pellet guns, and other firearms of all types, regardless of size;

(xi) Telecommunications. Except as set forth in the Design Guidelines, exterior antennas, aerials, satellite dishes, towers, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; provided, the Declarant and the Association shall have the right, without obligation, to erect or install and maintain such apparatus for the benefit of all or a portion of the Properties; and

(xii) Businesses. Conducting any Business, Trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities which are commonly conducted within residential areas within the Dwelling Unit so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (B) the business activity conforms to all zoning requirements for the Properties; (C) the business activity does not involve visitation of the Lot or Dwelling Unit by clients, customers, suppliers, or other business invitees or door to door solicitation of residents of the Properties; and (D) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

This subsection shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties, including the designation and use of Vacation Villas. The leasing of a Dwelling Unit shall not be considered a Business or Trade within the meaning of this subsection.

(c) Prohibited Conditions. The following shall be prohibited within the Properties:

(i) Walls, dog runs, animal pens, or fences of any kind on any Lot except as approved in accordance with Article XI; provided, the Declarant and the Association shall have the right, without obligation, to construct and maintain fences on any portion of the Properties which they own;

(ii) Open garage doors. Garage doors shall remain closed at all times except when entering and exiting the garage (iii) Excessive exterior lighting on any Lot. The Board shall in its sole discretion determine whether any exterior lighting is excessive;

(iv) Temporary Structures. Tents, shacks, or other structures of a temporary nature on any Lot except as approved in accordance with Article XI or as may be authorized by the Declarant during initial construction within the Properties. Approved temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair; and

(v) Storage. Storage of furniture, fixtures, appliances, machinery, equipment or other goods and chattels not in active use on the Common Area or any portion of a Lot which is visible from outside the Lot, except as approved in accordance with Article XI.

(d) Leasing.

(i) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Dwelling Units may be leased only in their entirety. No fraction or portion may be leased. No structure on a Lot other than the primary residential Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that any Lot comprised of more than one acre of land may make residential use of such a structure other than the primary residential Dwelling Unit for an ancillary use such as in-law suite or nanny suite, but not for independent leasing. There shall be no subleasing of Dwelling Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing. No transient tenants may be accommodated in a Dwelling Unit, and all leases shall be for an initial term of no less than 90 days. The leasing of any Lot is further subject to the restrictions on occupancy set forth in Section 2.3 of the Declaration.

(ii) Notice of Lease. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

(iii) Leasing by Declarant. Notwithstanding the above, Declarant retains the right to lease any Lot it owns for a period of not less than 30 days, provided the tenant is awaiting the completion of construction of a new home on a Lot he or she owns or is under a binding contract to purchase within Sun City Hilton Head.

(e) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Properties. Woodpiles or other material shall be stored in a manner so as not to be visible from outside the Lot and so as not to be attractive to native rodents, snakes, and other animals and to minimize the potential danger from fires. No other nuisance shall be permitted to exist or

operate upon any Lot so as to be offensive or detrimental to any other portion of the Properties. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(f) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved in accordance with Article XI or as required by the applicable governing jurisdiction. Such containers shall be kept inside garages or other structures on Lots except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(g) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

(h) Vehicles and Parking.

(i) The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, golf carts and recreational vehicles.

(ii) No vehicle may be left upon any portion of the Properties except in a garage, driveway, parking pad, or other area designated by the Board. Commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles shall not be parked within the Properties other than in enclosed garages; provided however, that one recreational vehicle, one camper, or one boat or other watercraft may be temporarily kept or stored completely in a driveway or completely on a parking pad on a Lot for not more than 24 hours within each seven day period.

## EXHIBIT "D": RULES OF ARBITRATION

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties in accordance with Section 19.10(b) of the Declaration stating plainly and concisely the information required by Section 17(a) of the Declaration and confirming Claimant's submission of the Claim to arbitration ("Arbitration Notice").

2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one Party Appointed Arbitrator, and all the Respondents shall agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three arbitrators.

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.

5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

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

8. There shall be no stenographic record of the proceedings.

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

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

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

12. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

13. There will be no post-hearing briefs.

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

15. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

16. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing. Notice and delivery shall occur in accordance with Section 19.10(b) of the Declaration or such other manner as is expressly agreed by the Parties in writing.

**EXHIBIT "E"**

**SECOND AMENDED AND RESTATED BYLAWS**

**OF**

**SUN CITY HILTON HEAD COMMUNITY ASSOCIATION, INC.**

(Effective march 22, 2012)



**EXHIBIT "E"**

**SECOND AMENDED AND RESTATED BYLAWS  
OF  
SUN CITY HILTON HEAD COMMUNITY ASSOCIATION, INC.**

(Effective 4/9, 2012)  
(Recorded)



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SECOND AMENDED AND RESTATED BYLAWS  
OF SUN CITY HILTON HEAD COMMUNITY ASSOCIATION, INC.

THIS SECOND Amended and Restated Bylaws of Sun City Hilton Head Community Association, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Sun City Hilton Head Community Association, Inc.

RECITALS

**WHEREAS**, Declarant executed an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head (hereinafter "2002 Declaration"), recorded May 17, 2002, in the Office of the Register of Deeds (hereinafter "ROD") for Beaufort County, South Carolina, in Deed Book 1582 at Page 407; and

**WHEREAS**, attached as Exhibit "E" to the 2002 Declaration are the Amended and Restated Bylaws (hereinafter "Bylaws") of Sun City Hilton Head Community Association, Inc. recorded on May 17, 2002, in the ROD in Deed Book 1582 at Page 468; and

**WHEREAS**, the Bylaws were amended by a First Amendment thereto recorded on May 12, 2004, in the ROD in Deed Book 1953 at Page 2045; and

**WHEREAS**, the Bylaws were amended by a Second Amendment thereto recorded on November 26, 2007, in the ROD in Deed Book 2654 at Page 59; and

**WHEREAS**, the Bylaws were amended by a Third Amendment thereto recorded on July 14, 2008, in the ROD in Deed Book 2745 at Page 730; and

**WHEREAS**, the Bylaws were amended by a Fourth Amendment thereto recorded on April 6, 2010, in the ROD in Deed Book 2946 at Page 1331; and

**WHEREAS**, Section 6.7(a) of the Bylaws states, in part, that "[u]ntil termination of the Class "B" Membership, Declarant may unilaterally amend these Bylaws for any purpose".

**WHEREAS**, the Class "B" Membership has not terminated; and

**WHEREAS**, Declarant desires to amend the Bylaws and record the amended Bylaws concurrently with the recordation of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun City Hilton Head (hereinafter "Declaration").

**NOW, THEREFORE**, Declarant restates and amends the Bylaws as follows:

The Recitals set forth above are incorporated herein by reference.

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

**1.1. Name.** The name of the Association shall be Sun City Hilton Head Community Association, Inc. ("Association").

**1.2. Principal Office.** The principal office of the Association shall be located in Jasper County or Beaufort County, State of South Carolina. The Association may have such other offices as the Board may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Sun City Hilton Head filed in the Register of Deeds of Jasper County and Beaufort County, South Carolina ("Declaration"), unless the context indicates otherwise.

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

2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B", as set forth in the Declaration. The provisions pertaining to membership in the Declaration are incorporated herein by this reference.

2.2. Place of Meetings. Meetings of the Association, a Neighborhood and Neighborhood Representatives shall be held within the Properties or at such other suitable place within Jasper County or Beaufort County, State of South Carolina as may be designated by the Board.

2.3. Annual Meetings. Annual meetings of the Association shall be set by the Board so as to occur at least 30 days but not more than 120 days before the close of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings. The President may call special meetings of the Association, a Neighborhood or Neighborhood Representatives. In addition, it shall be the duty of the President to call a special meeting of the Association or Neighborhood Representatives within thirty (30) days or as soon thereafter as practicable, if so directed by resolution of the Board, or by written request of the Declarant, or upon a petition signed by at least ten percent (10%) of the Class "A" Members of the Association, or upon petition signed by Neighborhood Representatives representing at least at least twenty (20%) percent of the total Class "A" Members of the Association.

### 2.5. Notice of Meetings.

(a) Notice stating the place, date and hour of any meeting of the Association, a Neighborhood, or Neighborhood Representatives, as applicable, shall be delivered to each Member or Neighborhood Representative entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. Such notice shall be given in accordance with the procedure for General Notices set forth in Section 19.10 of the Declaration. For ease of reference, Section 19.10 states as follows:

"Unless otherwise expressly stated in writing or required by law, general notices to Owners by the Association, the Board, or the Declarant may be given by any reasonable method, such as, without limitation:

"(i) U.S. Postal Service and sent by First Class Mail, addressed to the current address of such Owner on the records of the Association, postage prepaid, or

"(ii) delivery to the current address of such Owner on the records of the Association, or

"(iii) publication in the Association's newsletter, publication in a newspaper, or

"(iv) publication on any internet website or television channel that provides reasonable notice to Owners, or

“(v) any other notice procedure authorized by South Carolina law.”

(b) In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No other business shall be transacted at a special meeting except as stated in the notice.

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

2.7. Adjournment of Meetings. If any meeting of the Association, a Neighborhood or Neighborhood Representatives cannot be held because a quorum is not present, a majority of the Members or Neighborhood Representatives who are present at such meeting may adjourn the meeting to a date not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members or Neighborhood Representatives in the manner prescribed for regular meetings.

2.8. Voting Rights; Type of Vote; Ballot

(a) Votes by Class “A” Members. Members shall have such voting rights as are set forth in the Declaration. Such voting rights provisions are incorporated herein by this reference. The Board of Directors shall have the right to adopt Rules or Regulations further clarifying voting procedures if they are not inconsistent with the Declaration or the Bylaws.

(b) Neighborhood Representatives. Neighborhood Representatives shall have such voting rights as are set forth in the Declaration. Such voting rights provisions are incorporated herein by this reference.

(c) Votes by Written or Electronic Ballot; Form of Ballot. Any vote by a Voting Member or a Neighborhood Representative that may be taken at any annual, regular or special meeting may be by written or electronic ballot without a meeting in accordance with procedures established by the Board. Ballots shall be returned to the Secretary by the date of return specified on the ballot. The Board shall determine the form of all ballots, the wording on the ballot, any questions on which it seeks an advisory vote, and the deadline for return of ballots.

2.9. Proxies and Voting Authority.

(a) Neighborhood Representatives. Neighborhood Representatives may not vote by proxy but only in person or through their designated Alternate Neighborhood Representative or by written ballot as provided herein.

(b) Owners. Any Voting Member who is entitled to cast the vote for a Lot pursuant to Article III of the Declaration and these Bylaws may cast such vote in person or by proxy. Each proxy shall be in writing, dated, signed and filed with the Secretary prior to the meeting for which it is to be effective. Proxies may be delivered to the Secretary by personal delivery, U.S. mail, overnight courier, facsimile or scanned internet

document, to any Board member or the professional management agent, if any. Unless otherwise provided in the proxy, a proxy shall cover all votes which the Voting Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. No proxy shall be valid more than 11 months after its execution unless otherwise provided in the proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of the Owner's Lot.

(c) More Than One Owner. If there is more than one Owner of a particular Lot, the vote for such Lot at any meeting or vote by written ballot of Owners shall be cast by one Person designated by the Owners to be the "Voting Member". The Owners shall advise the Secretary of the Association in writing as to the name of the Voting Member prior to any meeting or ballot. If no designation of the Voting Member is made and more than one (1) Person seeks to be the Voting Member for a Dwelling Unit, the Board may either (i) recognize one (1) Person as the Voting Member or (ii) suspend the vote for the Lot (which shall still be counted for purposes of determining whether a quorum is present) until the issue has been resolved."

(d) Votes by Owner Which Is A Business Entity. If a Lot is owned by a corporation, partnership, limited liability company, trust or other business entity, the person entitled to cast the vote of Lot as "Voting Member" shall be designated in writing, signed by an officer of the corporation, a partner of the partnership, a member or manager of the limited liability company, a trustee of the trust, or other appropriate official of the owning business entity, and filed with the Secretary of the Association. Such certificate is valid until revoked or superseded by a subsequent certificate or a change in the ownership of the Lot."

(e) Failure to Designate Voting Member. If no certificate is on file with the Secretary of the Association for a Lot owned by more than one Person or a business entity, but an individual asserts his or her authority to vote on behalf of the Lot Owner, then the Lot Owner may be deemed present for the purpose of establishing a quorum but the Board or presiding officer may either, in their sole discretion, (i) recognize one (1) individual as the Voting Member, subject to subsequent verification satisfactory to the Board, in its sole discretion, or (ii) suspend the vote for the Lot until the issue has been resolved to the satisfaction of the Board, in its sole discretion.

2.10. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Owners, Members, Neighborhood Representatives, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

2.11. Quorum.

(a) Association Membership Meeting. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of twenty (20%) percent of the Voting Members entitled to cast the Class "A" votes in the Association shall constitute a quorum at all meetings of the Association Membership.

(b) Neighborhood Meeting. The presence in person or by proxy of twenty (20%) percent of Voting Members attributable to Lots in a Neighborhood shall constitute a quorum at any Neighborhood Meeting, including, but not limited to, the election of Neighborhood Representatives.

(c) Neighborhood Representatives Meeting. The presence in person of twenty (20%) percent of the Neighborhood Representatives entitled to cast the vote on behalf of the Neighborhood shall constitute a quorum at any meeting of Neighborhood Representatives.

2.12. Conduct of Meetings. The President of the Board shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting. In the event of the absence of

the President, the Vice President shall act in his stead. In the event of the absence of the Vice President or Secretary, any person designated by the Board of Directors shall act in the stead of the absent officer. Meetings of the Neighborhood Representatives shall be held in accordance with procedures set forth by the Board.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Voting Members or Neighborhood Representatives may be taken without a meeting if written consent specifically authorizing the proposed action is signed by each of the Voting Members or Neighborhood Representatives entitled to vote. All such consents shall be signed within 60 days after receipt of the earliest dated consent, shall be dated, and shall be delivered to the Association at its principal place of business in the State of South Carolina. Such consents shall be filed with the minutes of the Association. This provision shall be in addition to the right to vote by ballot pursuant to Section 2.8.

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

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

##### **3.1. Governing Body; Composition.**

(a) The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or residents of Dwelling Units who have completed, prior to or after being elected to the Board, such training and committee or other service requirements as are established by the Board. No more than one representative from a Lot may serve on the Board at the same time.

(b) In the case of a Member which is not a natural person, any officer, director, partner, member, trust officer or duly authorized representative of such Member, shall be presumed to be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member. Prior to or after being elected to the Board, such Directors shall undergo such training and committee or other service requirements as are established by the Board. No Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. Number of Directors. The Association shall be governed by a Board of Directors consisting of seven members.

3.3. Termination of Right of Class "B" Members to Appoint Any Directors. Subject to the provisions of Section 3.5, the directors shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) Whenever the "Class "B" Control Period ends, as set forth in Section 3.3 (b) of the Declaration; or

(b) Whenever the Class "B" Member so determines; provided, however, that such determination shall be evidenced by a written statement signed by the Class "B" Member, evidencing the intent of the Class "B" Member to permanently terminate its right to appoint some or all directors, effective as of the date set forth in such statement, and such statement is recorded, by Declarant or with Declarant's express written consent, in the Register of Deeds for Beaufort County.

##### **3.4. Nomination of Directors.**

(a) Except with respect to directors appointed by the Class "B" Member, nominations for

election to the Board shall be made by a Committee. The members of the Committee shall be Owners, residents of Dwelling Units, or any officer, director, partner, member or manager of a limited liability company, or trust officer of a Member which is not a natural person. The Committee shall be appointed by the Board to serve a term to be determined by the Board or until their successors are appointed.

(b) The Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled from each slate as provided in Section 3.5. All candidates shall have a reasonable opportunity to communicate their qualifications to the Owners and to solicit votes.

(c) In order to minimize potential conflicts of interest, Owners who are former employees of the Association, Declarant or Declarant's affiliates, and spouses of such employees, shall not be able to serve as directors elected by the Class "A" Members for a period which ends one (1) year after the Declarant is no longer the Class "B" Member.

3.5. Election and Term of Office. Notwithstanding any other provision of these Bylaws:

(a) The Association shall hold an annual election at which Class "A" Members shall be entitled to elect such directors as is necessary to fill seats for three (3) Class "A" Member-elected directors. Such election may occur at the Annual Meeting or at such other time as is specified by the Board of Directors. If the election occurs at the Annual Meeting, the term will commence on the later of (a) the first day of the month following the election or (b) January 1 following the election. If the election occurs on a different date other than the Annual Meeting, the term will commence on the first day of the month following the election.

(b) In 2012, the candidate receiving the most votes shall be elected and shall serve a term of two (2) years. In 2013, two (2) candidates shall be elected by the Class "A" Members. The candidate receiving the most votes shall be elected and shall serve a term of three (3) years. The candidate receiving the second most votes shall be elected and shall serve a term of two (2) years. Notwithstanding the preceding two sentences, the terms of the directors elected in 2012 and 2013 shall end on the first day of the month following the election of their successors.

(c) At any time, the Class "B" Member may, in its sole discretion, allow Class "A" Members, other than the Declarant, to elect any director or directors who otherwise would be an appointee of the Class "B" Member. Such decision of the Class "B" Member shall be in writing setting forth the date such decision shall be effective, which writing shall be delivered to the Board of Directors. Prior to the effective date, the Association shall hold an election at which Class "A" Members, other than the Declarant, shall be entitled to elect such additional director(s). Notwithstanding, such director(s) shall serve at the discretion of the Class "B" Member and may be removed at any time by the Class "B" Member by written notice delivered to the Board of Directors. The right of the Class "B" Member to remove and replace such director(s) may only be waived by a written document signed by the Class "B" Member and setting forth the date such decision shall be effective, which document is recorded, by Declarant or with Declarant's express written consent, in the Register of Deeds for Beaufort County.

(d) Within one hundred twenty (120) days after the termination of the right of the Class "B" member to appoint directors (whether as the result of (i) the filing by the Class "B" Member of the waiver referenced in the last sentence of paragraph (c), above, or (ii) the termination of the "Class "B" Control Period, as set forth in Section 3.3, above), the Association shall hold an election at which all directors shall be elected as set forth in paragraph (e), below (provided, however, during such intervening period the directors shall continue to serve, be removed and be replaced in the same manner as previously existing):

(e) In the situation set forth in paragraph (d), above, the directors shall be elected by both



Class "A" and Class "B" Members. In such election, pursuant to Section 3.3 of the Declaration, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Lot it owns. There shall be no cumulative voting. If the election occurs at the Annual Meeting, the term will commence on January 1. If the election occurs on a different date, the term will commence on the first day of the month following the election, or the first day of the month following the election of his or her successor, whichever is later. For the first election held pursuant to this subsection, the newly elected directors' terms may be staggered as determined by the currently seated Board. Thereafter, all terms shall be for a term of three (3) years.

### 3.6. Removal of Directors and Vacancies.

(a) Except as set forth above, any director elected by Class "A" Members may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such director, but shall not be subject to removal solely by the Class "B" Member. Any director whose removal is sought shall be given notice prior to any meeting of the Class "A" Members called and noticed for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director. Notwithstanding, if the term of the removed director will expire within one (1) year of the date that such director is removed by the Class "A" Members, then, in the sole discretion of the Board, a successor may be appointed by the Board to fill the vacancy for the remainder of the term.

(b) Any director elected solely by the Class "A" Members may be removed for cause by a majority of the other directors present at a regular or special meeting of the Board at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. Conditions constituting grounds for removal for cause shall include (without limitation): (i) having three (3) consecutive unexcused absences from Board meetings, (ii) being more than thirty (30) days delinquent in the payment of any assessment or other charge due the Association, (iii) failing to perform the duties of a director as set forth in the Bylaws or applicable law; (iv) violating any code of conduct for a Board member reasonably adopted by the Board or imposed by applicable law; (v) disclosing confidential information of the Association or the Board that is not authorized by the Board or required by the Declaration, the Bylaws or applicable law; (vi) engaging in inappropriate, illegal or improper conduct or behavior that negatively reflects on the Association or adversely affects the Association's orderly conduct of business; or (vii) having an irresolvable or unreported conflict of interest. Notwithstanding, if the removed Class "A" Member elected director occupies a position that otherwise would be appointed by the Class "B" Member, and the Class "B" Member has not filed a written waiver of its right to remove and replace a director as referenced in the last sentence of Section 3.5(c), then the Class "B" Member successor shall have right to approve such successor.

(c) In the event of the death, disability, or resignation of a director elected by Class "A" Members, the Board, including directors appointed by the Class "B" Member, may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a director to serve the remainder of the director's term of office. This shall not affect the right of the Class "B" Member set forth in Section 3.5(c) to elect to declare a vacancy and appoint a successor for any director elected by Class "A" Members who otherwise would be an appointee of the Class "B" Member.

3.7. Organizational Meetings. The Board shall hold its first meeting within 60 days after each annual election of directors.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as the Board shall determine, but at least one such meeting shall be held each quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by internet or facsimile, with acknowledgement of receipt or response by recipient. All such notices shall be given at the director's telephone number, internet address, or facsimile number or address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States Postal Service mailbox at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be given at least 48 hours before the time set for the meeting.

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

3.11. Quorum of Board of Directors. At all meetings of the Board, 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, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than two nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Compensation. No director shall receive any compensation from the Association for acting as such; provided however, any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

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

3.14. Open Meetings. Subject to the provisions of Sections 3.15 and 3.16, all meetings of the Board shall be open to all Members, but a Member other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by the President and approved by the Board. In such case, the President may limit the time any Member may speak. Notwithstanding the preceding sentence, the President may adjourn any meeting of the Board and reconvene in executive session, in which only Directors and persons authorized by the Board may participate, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters or confidential business information.

3.15. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting

forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote. Written consent or consents shall be filed with the minutes of the proceedings of the Board.

3.16. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all Persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

3.17. Powers. The Board shall have all of the powers and duties necessary and appropriate for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these Bylaws, or South Carolina law directed to be done and exercised exclusively by the Owners or Neighborhood Representatives generally.

3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparation and adoption of annual budgets and establishing each Owner's share of the Common Expenses and Neighborhood Expenses, if any;
- (b) levying and collecting assessments from the Owners to fund the Common Expenses and Neighborhood Expenses, if any;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which the Board shall approve and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending rules and regulations, including Use Restrictions, and establishing penalties for infractions thereof;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws;
- (i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules adopted by the Board and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (j) obtaining and carrying property, liability and commercial crime insurance, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

- (k) paying all taxes and/or assessments which are or could become a lien on the Common Area or a portion thereof;
- (l) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;
- (m) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (n) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Declaration, the Articles, the Bylaws, rules and all other books, records, and financial statements of the Association;
- (o) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;
- (p) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by South Carolina law, the Articles, and these Bylaws; and
- (q) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

### 3.19. Right of the Class "B" Member to Disapprove Actions

- (a) So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the judgment of the Class "B" Member, would tend to impair rights of the Declarant or its designees under the Declaration or these Bylaws, or interfere with development, construction or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Class "B" Member or the Declarant in the Declaration or these Bylaws.
- (b) The Class "B" Member shall be given written notice of all meetings of the Association, the Board or any committee thereof and of all proposed actions of the Association, the Board or any committee thereof to be approved at such meetings or by written consent in lieu of a meeting. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the Secretary of the Association, as it may change from time to time, which notice complies with the requirements for Board meetings set forth in these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting.
- (c) The Class "B" Member shall be given the opportunity at each 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. The Class "B" Member, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.
- (d) No action, policy or program subject to the right of disapproval by the Class "B" Member set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (e) below has expired.

(e) The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove an action, policy or program at any time within 10 days following the meeting at which such action was taken. In the case of any action taken by written consent in lieu of a meeting or any action for which the Class "B" Member or directors representing the Class "B" Member were not given notice, the Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following receipt of written notice of the proposed action. The right of the Class "B" Member to disapprove may be used to block proposed actions, but shall not require any action or counteraction on behalf of any committee, the Board, or the Association unless such action or counteraction is required to countermand an action, policy or program that was not properly noticed and implemented in accordance with these Bylaws. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide pursuant to the Declaration or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. Management. The Board may, but shall not be required to, employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize; provided, however, that such management agent may not be terminated by the Board without the prior written consent of the Declarant for as long as the Declarant owns any portion of the Properties or any Private Amenity or has the right to annex property pursuant to Section 9.1 of the Declaration. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager. The Board may delegate to such management agent(s) such powers as are necessary to perform his or her assigned duties, but shall not delegate policy making authority. The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed; provided however, that any "shortage" shall be calculated on a cash basis of accounting as provided in Section 10.2 of the Declaration;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) the following financial and related information shall be regularly prepared by the Board and copies made available to all Members of the Association at the expense of the Association:

(i) The Board shall cause a reserve budget and a Common Expense budget (collectively referred to as the "Budget") for the Association (which includes the budget for each of the Neighborhoods, if any), to be prepared for each fiscal year of the Association. The Board shall post written notice in a prominent place within the Properties that the Budget is available at the business office of the Association or at another suitable location within the Properties. If any Member requests a copy of the Budget, the Association shall provide one copy to the Member without charge by either (x) depositing a

copy into a United States Postal Service mailbox within 7 days of receipt of such request, or (y) if the Member so requests, sending a copy by internet within 7 days of receipt of such request.

(ii) The Board shall cause an annual report ("Financial Statement") to be prepared in accordance with generally accepted accounting principles within 120 days after close of the Association's fiscal year. The Board shall post written notice in a prominent place within the Properties that the Financial Statement is available at the business office of the Association or at another suitable location within the Properties. If any Member requests a copy of the Financial Statement, the Association shall provide one copy to the Member without charge by either (x) depositing a copy into a United States Postal Service mailbox within 7 days of receipt of such request, or (y) if the Member so requests, sending a copy by internet within 7 days of receipt of such request. The Financial Statement shall consist of:

(A) a balance sheet as of the end of the fiscal year;

(B) an income and expense statement for the fiscal year (this statement shall include a schedule of assessments received and receivables identified by the numbers of the Lots and the names of the Owners assessed); and

(C) a statement of changes in financial position for the fiscal year.

Such Financial Statement shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant.

(iii) The Board shall do the following at least quarterly:

(A) cause a current reconciliation of the Association's operating accounts to be made and review the same;

(B) cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(C) review the current year's actual reserve revenues and expenses compared to the current year's Budget;

(D) review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts;

(E) review an income and expense statement for the Association's operating and reserve accounts; and

(F) review the 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.

3.22. Borrowing. The Association, acting through its Board, shall have the power to borrow money for any legal purpose; provided, the Board shall obtain the approval by vote or written consent of Neighborhood Representatives representing at least a majority of the total Class "A" Members if the proposed borrowing is for the purpose of making discretionary capital improvements or purchasing additional capital assets and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 25% of the budgeted gross expenses of the Association for that fiscal year.

3.23. Rights of the Association. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, Neighborhood Associations and other owners or residents associations, both within and outside the Properties.

3.24. Enforcement.

(a) Governing Documents Defined: "Governing Documents" are defined by the Declaration as "the Declaration and any Supplemental Declaration, the Bylaws, rules and regulations, the Design Guidelines, the Use Restrictions, or any document authorized pursuant to any of them, as amended from time to time."

(b) Modifications Committee Enforcement of Architectural and Design Standards: The Modifications Committee, as defined in Article XI of the Declaration, shall enforce the Design Guidelines and procedures established pursuant to Article XI of the Declaration. The Board may, in its discretion, establish procedures for hearings or review of hearings relating to Modifications Committee actions by the Board or the Modifications Committee.

(c) Covenants Committee Enforcement of Other Provisions of Governing Documents:

(i) Notice. Prior to imposition of any sanction authorized by the Declaration relating to the enforcement of the Governing Documents, other than matters under the jurisdiction of the Modifications Committee as set forth in paragraph (b), above, the Covenants Committee or the Association management agent shall give written notice to the alleged violator, which notice shall include (A) the nature of the alleged violation, (B) the proposed sanction to be imposed, (C) the opportunity for the alleged violator to present a written request for a hearing to the Covenants Committee within 14 days of the date of the notice; and (D) a statement that the proposed sanction shall be imposed unless a request for a hearing is received by the Covenants Committee within such time period. If a timely request for a hearing is not received by the Covenants Committee, the sanction stated in the notice shall be imposed; provided, however, the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured or if a cure is diligently commenced within the 14 day period. Such suspension shall not constitute a waiver of the Association's right to sanction future violations of the same or other provisions and rules by any Person.

(ii) Hearing. If a hearing is requested within the allotted 14 day period, the hearing shall be held before the Covenants Committee. The alleged violator shall be afforded a reasonable opportunity to be heard and reasonable proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is provided by the Person who delivered or originated the notice. The notice requirement shall be deemed satisfied if the 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.

(iii) Appeal. If a hearing is held before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the management agent, President, or Secretary of the Association within 14 days after the hearing date. Unless expressly authorized by the Covenants Committee or the Board, in their sole discretion, the sanction imposed by the Covenants Committee shall not be deferred pending the appeal hearing. If the sanction is deferred during the appeal, however, but the sanction imposed by the Covenants Committee is upheld on appeal, the sanction shall be effective as of the date initially imposed by the Covenants Committee.

(iv) Imposition of Sanctions Prior to Hearing. If the Board determines that prompt

imposition of a sanction may be required to avoid or decrease the possibility of injury to persons or damage to property, or to enforce important provisions of the Governing Documents, then (A) the above hearing and appeal process shall not be a prerequisite to the imposition of a sanction, and (B) the Board may authorize the Association to initiate or respond to a legal action or proceeding, including, without limitation, a temporary restraining order or other mandatory or prohibitive equitable relief.

#### **Article IV.: Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President, Vice President, Secretary and Treasurer shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual election of directors, as set forth in Article III.

4.3. Removal and Vacancies. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Vice President shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting. The Secretary shall keep the minutes of all meetings of the Association and the Board and shall have charge of such books and papers as the Board may direct. In the Secretary's absence, any officer directed by the Board shall perform all duties incident to the office of secretary. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

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

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by resolution of the Board.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12 hereof.

#### **Article V.: Committees**

5.1. General. The Board may establish such committees and charter clubs as it deems appropriate to perform such tasks and functions as the Board may designate by resolution. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, however, any committee member, including the committee chair, may be removed by the vote of a majority of the directors. Any resolution



establishing a charter club shall designate the requirements, if any, for membership therein. Each committee and charter club shall operate in accordance with the terms of the resolution establishing such committee or charter club.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board shall 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, these Bylaws, and any resolutions the Board may adopt, the Covenants Committee shall have such authority as is set forth in Section 3.24 (c) of these Bylaws.

5.3. Neighborhood Committees.

(a) In addition to any other committees established as provided above, each Neighborhood may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. Upon written petition signed by Owners of 25% of the Lots within any Neighborhood, the Board shall call for an election of a Neighborhood Committee for such Neighborhood no later than 60 days from receipt of such petition or within 425 days following the first closing in that Neighborhood, whichever occurs first. Such first election may be held at a meeting or by written ballot at the discretion of the Board. Such Neighborhood Committees, if formed, shall consist of three members; provided, however, by a majority vote of the Owners within the Neighborhood this number may be increased to five. Two members of the Neighborhood Committee shall be the Neighborhood Representative and alternate Neighborhood Representative.

(b) Each Owner of a Lot within a Neighborhood may cast the vote(s) assigned to his or her Lot in the Declaration for each vacancy to be filled on the Neighborhood Committee. The candidate(s) receiving the most votes shall be elected. The presence in person or by proxy of Voting Members representing at least twenty (20%) percent of the total Class "A" attributable to Lots in the Neighborhood shall constitute a quorum at any meeting of the Neighborhood.

(c) If a Neighborhood Committee has been formed for a particular Neighborhood, subsequent members of the committee shall be elected by the vote of Owners of Lots within that Neighborhood at their annual meeting. The annual meeting date shall be set by the Neighborhood Committee so as to occur at the same time as the election of the Board and the Neighborhood Representatives.

(d) Each Neighborhood Committee shall adopt rules and procedures for the operation of such committee which shall be distributed to all Owners within such Neighborhood; provided however, that such rules and procedures shall not conflict with any provisions of the Governing Documents of the Association, or any Board resolution.

(e) Committee members shall be elected for a term of two years or until their successors are elected, whichever is longer. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board.

(f) In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedural requirements set forth in these Bylaws.

## **Article VI: Miscellaneous**

6.1. Fiscal Year. The fiscal year of the Association shall be January 1 through December 31 unless otherwise established by Board resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles, the Declaration, or these Bylaws.

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

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, Bylaws, and Articles, any amendments to the foregoing, the rules of the Association, the membership register, the most recent Financial Statement, the current Budget, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable 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;
- (iii) payment of the cost of reproducing copies of documents requested, including, without limitation, the costs of personnel reproducing such documents; and
- (iv) procedures for ensuring the security, and, where appropriate, the confidentiality of the documents and reasonably minimizing interruption of the normal activities of the Association or the custodian of the records.

(c) Inspection by Directors. Every director shall have the right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association in furtherance of such director's duties as a director, but shall be subject to the conditions set forth in (b)(i), (ii) and (iv), above.

6.5. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications to Members under these Bylaws shall be in writing. Notice shall be given in accordance with Section 19.10 of the Declaration.

6.6. Indemnification.

(a) The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred by them and each of them in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

(b) The officers, directors, and committee members shall not be liable for any mistake of

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

6.7. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend these Bylaws for any purpose. Thereafter, Declarant may unilaterally amend these Bylaws if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of these By-Laws; or (vi) eliminate or clarify any inconsistency or ambiguity in these By-Laws. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing. In addition, so long as Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1 of the Declaration, it may unilaterally amend these Bylaws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. Thereafter and otherwise, these Bylaws may be amended in accordance with Section 6.7(b).

(b) By Board. Except as provided by subsection 6.7(a) above, until the termination of the Class "B" Control Period, as set forth in Section 3.3, above, these Bylaws may be amended only by resolution duly adopted by the Board and with the written consent of the Declarant.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation in the Office of the Register of Deeds for Beaufort County and/or Jasper County, South Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

(d) Authority of Owner to Consent to Amendment. If an Owner consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Owner has the authority to do so, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(e) No Modification of Declarant's Rights. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege for as long as the Declarant owns any Private Amenity or any portion of the Properties or has the right to annex property pursuant to Section 9.1 of the Declaration.

*The Remainder of this Page Intentionally Left Blank.}*

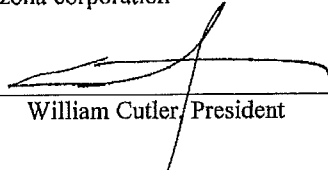
{Signature Page for Second Amended and Restated Bylaws  
of  
Sun City Hilton Head Community Association, Inc.}

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amended and Restated Bylaws of Sun City Hilton Head Community Association, Inc. this 22 day of March, 2012.

WITNESSES:

DEL WEBB COMMUNITIES, INC.  
an Arizona corporation

*Savannah Thompson*  
*Savannah Thompson*

By:   
William Cutler, President

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF BEAUFORT         )

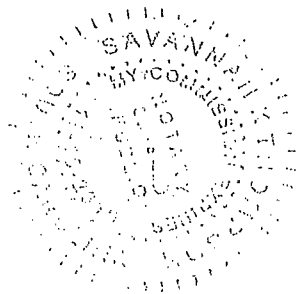
ACKNOWLEDGMENT

I, the undersigned Notary Public, hereby certify that William Cutler, President of Del Webb Communities, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 22 day of March, 2012.

*Savannah Thompson*  
Print Name: Savannah Thompson  
Notary Public for South Carolina

(SEAL)





201300005304 10/28/2013 AT 11:53 AM  
OR Volume 0861 Page 0368 - 0370  
Filed for Record in JASPER COUNTY ROD  
Amendment Fee: \$8.00

Cross Reference to Second Amended and Restated Declaration Recorded in Book 0825  
Beginning at Page 0842 in the Office of the Register of Deeds of Jasper County, South Carolina.

STATE OF SOUTH CAROLINA ) SECOND AMENDMENT TO THE  
) SECOND AMENDED AND RESTATED  
COUNTY OF JASPER ) DECLARATION OF COVENANTS,  
) CONDITIONS AND RESTRICTIONS  
) FOR SUN CITY HILTON HEAD

DEED BOOK: 0861 PAGE: 1143  
DATE: 10/29/2013 12:34:14 PM  
Hazel Holmes / PG  
AUDITOR JASPER COUNTY, SC

This Second Amendment to the Second Amended and Restated Declaration of  
Covenants, Conditions and Restrictions for Sun City Hilton Head Community Association, Inc.  
(hereinafter referred to as "Second Amendment") is made this 14 day of October, 2013, by  
Del Webb Communities, Inc., an Arizona corporation, (hereinafter, with its successors and  
assigns, referred to as "Declarant").

WITNESSETH

WHEREAS, the First Amendment to the Second Amended and Restated Declaration of  
Covenants, Conditions and Restrictions for Sun City Hilton Head Community Association, Inc.  
was recorded on August 3, 2012, in Deed Book 0831 at Page 0907;

WHEREAS, Section 19.2(a) of the Second Amended and Restated Declaration of  
Covenants, Conditions, and Restrictions for Sun City Hilton Head Community Association, Inc.  
states, in part, that: "[u]ntil termination of the Class "B" membership, Declarant may unilaterally  
amend this Declaration for any purpose"; and

WHEREAS, the Class "B" membership has neither ceased nor been converted to Class  
"A" membership, and Declarant desires to amend the Second Amended and Restated Declaration  
of Covenants, Conditions, and Restrictions for Sun City Hilton Head Community Association,  
Inc.

NOW, THEREFORE, Declarant amends the Second Amended and Restated  
Declaration of Covenants, Conditions, and Restrictions for Sun City Hilton Head Community  
Association, Inc. as follows:

1. Section 3.5 Neighborhoods, Neighborhood Representatives.

(a) Neighborhoods. Every Lot shall be located within a Neighborhood.  
The Lots within a particular Neighborhood may be subject to additional Covenants. There may

be a Neighborhood Committee established to represent the interests of such Owners in each Neighborhood as set forth in the ByLaws.

2. The following scrivners' errors are hereby corrected:

a. Section "2.3 Exclusive Common Area" is changed to "Section 2.4 Exclusive Common Area";

b. ARTICLE XI should be set forth as follows:

**ARTICLE XI: ARCHITECTURAL AND DESIGN STANDARDS**

c. Section 11.8 Enforcement; Completion; Agents of Owner.

Subparagraph "(a) Enforcement." should be added.

d. Section 17.2 Claims.

(b)(iv) is changed to (b)(iii)

(b)(v) is changed to (b)(iv)

(b)(vi) is changed to (b)(v)

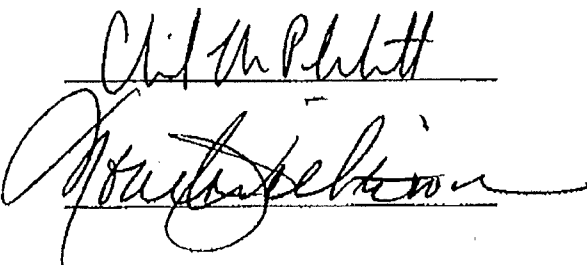
Ratification of Covenants, Conditions, and Restrictions

Except as modified or changed herein, the Second Amended and Restated Covenants, Conditions, and Restrictions are hereby ratified as if restated fully herein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amendment to the Second Amended and Restated Covenants, Conditions and Restrictions of Sun City Hilton Head Community Association, Inc. this 14<sup>th</sup> day of October, 2013.

WITNESS:

DEL WEBB COMMUNITIES, INC.,  
an Arizona Corporation



By: 

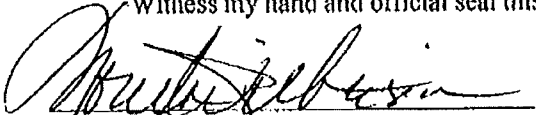
William Cutler  
Its President

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER )

ACKNOWLEDGMENT

I, the undersigned Notary Public, hereby certify that William Cutler, President of Del Webb Communities, Inc., personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14<sup>th</sup> day of October, 2013.

  
Notary Public for South Carolina  
My Commission Expires: 2/2/20

F:\client\SWSun City\AC C R\CC&R.Second Amendment.10.10.2013.doc





delivery, U.S. mail, overnight courier, facsimile or scanned internet document, to any Board member or the professional management agent, if any. Unless otherwise provided in the proxy, a proxy shall cover all votes which the Voting Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. No proxy shall be valid more than 11 months after its execution unless otherwise provided in the proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of the Owner's Lot.

(c) One Vote Per Lot. Except as otherwise specified in this Declaration or the ByLaws or otherwise required by law, the vote for each Lot owned by a Class "A" Member shall be exercised by the Owner.

(d) Multiple Ownership. In the event of Multiple Ownership of any kind, including joint tenants, a partnership, corporation, limited liability company, trust or any other business entity, the name of the person entitled to cast a vote shall be designated as the "Voting Member". The Owner shall advise the Association in writing as to the name of the Voting Member.

(e) No Designated Voting Member. If no designation of the Voting Member is made and more than one individual seeks to exercise the right to vote, the Board may either (i) recognize one Owner as the Voting Member or (ii) suspend the vote for the Lot until the issue has been resolved to the satisfaction of the Board, in its sole discretion. In any event, the Owner may be deemed present for the purpose of establishing a quorum.

(f) Clarifying Rules. The Board of Directors shall have the right to adopt Rules and Regulations further clarifying voting procedures.

2.    3.2 Number of Directors. The Association shall be governed by a Board of Directors consisting of no fewer than five (5) nor greater than seven (7) members.

3.    3.5 Election and Term of Office. Notwithstanding any other provision of these Bylaws:

(a) The Association shall hold an election at which Class "A" Members shall be entitled to elect such directors as is necessary to fill seats for Class "A" Member elected directors. Such election may occur at the Annual Meeting or at such other time as is specified by the Board of Directors. If the election occurs at the Annual Meeting, the term will commence on the later of (a) the first day of the month following the election or (b) January 1 following the election. If the election occurs on a different date other than the Annual Meeting, the term will commence on the first day of the month following the election.

(b) In 2013, one (1) candidate shall be elected by the Class "A" Members to serve a term of three (3) years. In 2014, one (1) candidate shall be elected by the Class "A" Members to serve a term of three (3) years. Thereafter, an election shall be held as is necessary to fill open seats for Class "A" Member elected directors as determined by the currently seated Board. Notwithstanding the preceding two sentences, the terms of directors shall end on the first day of the month following the election of their successors.

(c) At any time, the Class "B" Member may, in its sole discretion, allow Class "A" Members, other than the Declarant, to elect any director or directors who otherwise would be an appointee of the Class "B" Member. Such decision of the Class "B" Member shall be in writing setting forth the date such decision shall be effective, which writing shall be delivered to the Board of Directors. Prior to the effective date, the Association shall hold an election at which Class "A" Members, other than the Declarant, shall be entitled to elect such additional director(s). Notwithstanding, such director(s) shall serve at the discretion of the Class "B" Member and may be removed at any time by the Class "B" Member by written notice delivered to the Board of Directors. The right of the Class "B" Member to remove and replace such director(s) may only be waived by a written document signed by the Class "B" Member and setting forth the date such decision shall be effective, which document is recorded, by Declarant or with Declarant's express written consent, in the Register of Deeds for Beaufort County.

(d) Within one hundred twenty (120) days after the termination of the right of the Class "B" Member to appoint directors (whether as a result of (i) the filing by the Class "B" Member of the waiver referenced in the last sentence of paragraph (c), above, or (ii) the termination of the Class "B" Control Period, as set forth in Section 3.3 above), the Association shall hold an election at which all directors shall be elected as set forth in paragraph (e) below (provided, however, during such intervening period the directors shall continue to serve, be removed and be replaced in the same manner as previously existing).

(e) In the situation set forth in paragraph (d), above, the directors shall be elected by both Class "A" and Class "B" Members. In such election, pursuant to Section 3.3 of the Declaration, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Lot it owns. There shall be no cumulative voting. If the election occurs at the Annual Meeting, the term will commence on January 1. If the election occurs on a different date, the term will commence on the first day of the month following the election, or the first day of the month following the election of his or her successor, whichever is later. For the first election held pursuant to this subsection, the newly elected directors' term may be staggered as determined by the currently seated Board. Thereafter, all terms shall be for a term of three (3) years.

4.      5.3      Neighborhood Committees.

(a) In addition to any other committees established as provided above, each Neighborhood may establish a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. Upon written

petition signed by Owners of twenty-five (25%) percent of the Lots within any Neighborhood, the Board shall establish a Neighborhood Committee for such Neighborhood no later than sixty (60) days from the receipt of such petition or within four hundred twenty five (425) days following the first closing in that Neighborhood, whichever occurs first. Each Neighborhood Committee, if formed, shall consist of up to a maximum of five (5) members. Two members of the Neighborhood Committee shall be the Neighborhood Representative and alternate Neighborhood Representative. The remaining members of the Neighborhood Committee shall be appointed by the elected Neighborhood Representative and alternate Neighborhood Representative.

(b) Each Neighborhood Committee shall adopt rules and procedures for the operation of such committee which shall be distributed to all Owners within such Neighborhood; provided however, that such rules and procedures shall not conflict with any provisions of the Governing Documents of the Association, or any Board resolution. A Neighborhood Committee may advise the Board on any issue, but shall not have the authority to bind the Board.

Ratification of ByLaws

Except as modified or changed herein, the Second Amended and Restated Bylaws are hereby ratified as if restated fully herein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amendment to the Second Amended and Restated Bylaws of Sun City Hilton Head Community Association, Inc. this 14th day of October, 2013.

WITNESS:

DEL WEBB COMMUNITIES INC., an  
Arizona Corporation

Chit M Phitt

By: [Signature]

William Cutler  
Its President

[Signature]

STATE OF SOUTH CAROLINA      )  
  )  
COUNTY OF JASPER                 )

ACKNOWLEDGMENT

I, the undersigned Notary Public, hereby certify that William Cutler, President of Del Webb Communities, Inc., personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14<sup>th</sup> day of October, 2013.

*Monty H. Brown*  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 2/2/22

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9/4/13

BEAUFORT COUNTY SC - RDD  
BK 03283 PGS 0869-08718  
FILE NUM 2013063946  
10/30/2013 02:11:43 PM  
REC'D BY S SMITH RCPT# 727248  
RECORDING FEES 11.00

Cross Reference to Exhibit "E" to the Second Amended and Restated Declaration Recorded in Deed Book 03133 Beginning at Page 0551 in the Office of the Register of Deeds of Beaufort County, South Carolina.

STATE OF SOUTH CAROLINA )	SECOND AMENDMENT TO THE SECOND AMENDED AND RESTATED BYLAWS OF SUN CITY HILTON HEAD COMMUNITY ASSOCIATION, INC.
) )	
COUNTY OF BEAUFORT )	
) )	

This Second Amendment to the Second Amended and Restated Bylaws of Sun City Hilton Head Community Association, Inc. (hereinafter referred to as "Second Amendment") is made this 23 day of October, 2013, by Del Webb Communities, Inc., an Arizona corporation, (hereinafter, with its successors and assigns, referred to as "Declarant").

WITNESSETH

WHEREAS, the First Amendment to the Second Amended and Restated Bylaws of Sun City Hilton Head Community Association, Inc. was recorded on September 6, 2012, in Deed Book 03172 at Page 2593; and

WHEREAS, Section 6.7 of the Second Amended and Restated Bylaws of Sun City Hilton Head Community Association, Inc. states, in part, that: "[u]ntil termination of the Class "B" membership, Declarant may unilaterally amend these Bylaws for any purpose"; and

WHEREAS, the Class "B" membership has neither ceased nor been converted to Class "A" membership, and Declarant desires to amend the Second Amended and Restated Bylaws of Sun City Hilton Head Community Association, Inc.

NOW, THEREFORE, Declarant amends the Second Amended and Restated Bylaws as follows:

I. 2.9 Proxies and Voting Authority.

(a) Neighborhood Representatives. Neighborhood Representatives may not vote by proxy but only in person or through their designated Alternate Neighborhood Representative or by written ballot as provided herein.

(b) Owners. Any Voting Member who is entitled to cast the vote for a Lot pursuant to Article III of the Declaration and these Bylaws may cast such vote in person or by proxy. Each proxy shall be in writing, dated, signed and filed with the Secretary prior to the meeting for which it is to be effective. Proxies may be delivered to the Secretary by personal delivery, U.S. mail, overnight courier, facsimile or scanned internet document, to any Board

member or the professional management agent, if any. Unless otherwise provided in the proxy, a proxy shall cover all votes which the Voting Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. No proxy shall be valid more than 11 months after its execution unless otherwise provided in the proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of the Owner's Lot.

(c) One Vote Per Lot. Except as otherwise specified in this Declaration or the ByLaws or otherwise required by law, the vote for each Lot owned by a Class "A" Member shall be exercised by the Owner.

(d) Multiple Ownership. In the event of Multiple Ownership of any kind, including joint tenants, a partnership, corporation, limited liability company, trust or any other business entity, the name of the person entitled to cast a vote shall be designated as the "Voting Member". The Owner shall advise the Association in writing as to the name of the Voting Member.

(e) No Designated Voting Member. If no designation of the Voting Member is made and more than one individual seeks to exercise the right to vote, the Board may either (i) recognize one Owner as the Voting Member or (ii) suspend the vote for the Lot until the issue has been resolved to the satisfaction of the Board, in its sole discretion. In any event, the Owner may be deemed present for the purpose of establishing a quorum.

(f) Clarifying Rules. The Board of Directors shall have the right to adopt Rules and Regulations further clarifying voting procedures.

2. 3.2 Number of Directors. The Association shall be governed by a Board of Directors consisting of no fewer than five (5) nor greater than seven (7) members.

3. 3.5 Election and Term of Office. Notwithstanding any other provision of these Bylaws:

(a) The Association shall hold an election at which Class "A" Members shall be entitled to elect such directors as is necessary to fill seats for Class "A" Member elected directors. Such election may occur at the Annual Meeting or at such other time as is specified by the Board of Directors. If the election occurs at the Annual Meeting, the term will commence on the later of (a) the first day of the month following the election or (b) January 1 following the election. If the election occurs on a different date other than the Annual Meeting, the term will commence on the first day of the month following the election.

(b) In 2013, one (1) candidate shall be elected by the Class "A" Members to serve a term of three (3) years. In 2014, one (1) candidate shall be elected by the Class "A" Members to serve a term of three (3) years. Thereafter, an election shall be held as is necessary to fill open seats for Class "A" Member elected directors as determined by the currently seated

Board. Notwithstanding the preceding two sentences, the terms of directors shall end on the first day of the month following the election of their successors.

(c) At any time, the Class "B" Member may, in its sole discretion, allow Class "A" Members, other than the Declarant, to elect any director or directors who otherwise would be an appointee of the Class "B" Member. Such decision of the Class "B" Member shall be in writing setting forth the date such decision shall be effective, which writing shall be delivered to the Board of Directors. Prior to the effective date, the Association shall hold an election at which Class "A" Members, other than the Declarant, shall be entitled to elect such additional director(s). Notwithstanding, such director(s) shall serve at the discretion of the Class "B" Member and may be removed at any time by the Class "B" Member by written notice delivered to the Board of Directors. The right of the Class "B" Member to remove and replace such director(s) may only be waived by a written document signed by the Class "B" Member and setting forth the date such decision shall be effective, which document is recorded, by Declarant or with Declarant's express written consent, in the Register of Deeds for Beaufort County.

(d) Within one hundred twenty (120) days after the termination of the right of the Class "B" Member to appoint directors (whether as a result of (i) the filing by the Class "B" Member of the waiver referenced in the last sentence of paragraph (c), above, or (ii) the termination of the Class "B" Control Period, as set forth in Section 3.3 above), the Association shall hold an election at which all directors shall be elected as set forth in paragraph (e) below (provided, however, during such intervening period the directors shall continue to serve, be removed and be replaced in the same manner as previously existing).

(e) In the situation set forth in paragraph (d), above, the directors shall be elected by both Class "A" and Class "B" Members. In such election, pursuant to Section 3.3 of the Declaration, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Lot it owns. There shall be no cumulative voting. If the election occurs at the Annual Meeting, the term will commence on January 1. If the election occurs on a different date, the term will commence on the first day of the month following the election, or the first day of the month following the election of his or her successor, whichever is later. For the first election held pursuant to this subsection, the newly elected directors' term may be staggered as determined by the currently seated Board. Thereafter, all terms shall be for a term of three (3) years.

4. 5.3 Neighborhood Committees.

(a) In addition to any other committees established as provided above, each Neighborhood may establish a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. Upon written petition signed by Owners of twenty-five (25%) percent of the Lots within any Neighborhood, the Board shall establish a Neighborhood Committee for such Neighborhood no later than sixty (60) days from the receipt of such petition or within four hundred twenty five (425) days following the first closing in that Neighborhood, whichever occurs first. Each Neighborhood Committee, if formed, shall consist of up to a maximum of five (5) members. Two members of the Neighborhood Committee shall be the Neighborhood Representative and alternate



Neighborhood Representative. The remaining members of the Neighborhood Committee shall be appointed by the elected Neighborhood Representative and alternate Neighborhood Representative.

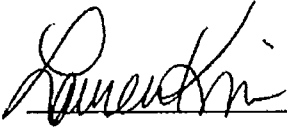
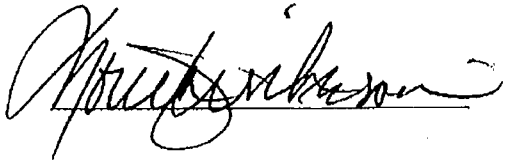
(b) Each Neighborhood Committee shall adopt rules and procedures for the operation of such committee which shall be distributed to all Owners within such Neighborhood; provided however, that such rules and procedures shall not conflict with any provisions of the Governing Documents of the Association, or any Board resolution. A Neighborhood Committee may advise the Board on any issue, but shall not have the authority to bind the Board.

Ratification of ByLaws

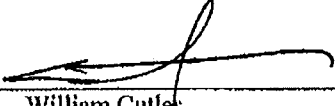
Except as modified or changed herein, the Second Amended and Restated Bylaws are hereby ratified as if restated fully herein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amendment to the Second Amended and Restated Bylaws of Sun City Hilton Head Community Association, Inc. this 23 day of October, 2013.

WITNESS:

  
\_\_\_\_\_  
  
\_\_\_\_\_

DEL WEBB COMMUNITIES INC.,  
an Arizona Corporation

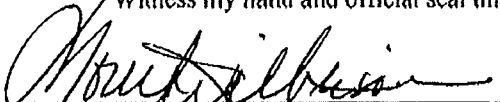
By:   
\_\_\_\_\_  
William Cutler  
Its President

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

ACKNOWLEDGMENT

I, the undersigned Notary Public, hereby certify that William Cutler, President of Del Webb Communities, Inc., personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 23rd day of October, 2013.

  
Notary Public for South Carolina  
My Commission Expires: 2/2/22



be a Neighborhood Committee established to represent the interests of such Owners in each Neighborhood as set forth in the ByLaws.

2. The following scrivners' errors are hereby corrected:

a. Section "2.3 Exclusive Common Area" is changed to "Section 2.4 Exclusive Common Area";

b. ARTICLE XI should be set forth as follows:

**ARTICLE XI: ARCHITECTURAL AND DESIGN STANDARDS**

c. Section 11.8 Enforcement; Completion; Agents of Owner.

Subparagraph "(a) Enforcement." should be added.

d. Section 17.2 Claims.

(b)(iv) is changed to (b)(iii)

(b)(v) is changed to (b)(iv)

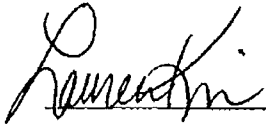
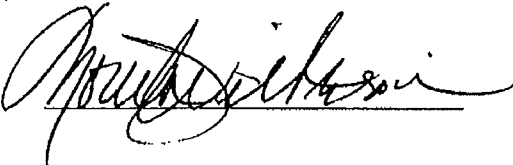
(b)(vi) is changed to (b)(v)

Ratification of Covenants, Conditions, and Restrictions

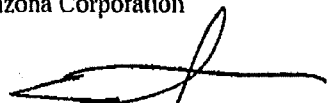
Except as modified or changed herein, the Second Amended and Restated Covenants, Conditions, and Restrictions are hereby ratified as if restated fully herein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amendment to the Second Amended and Restated Covenants, Conditions and Restrictions of Sun City Hilton Head Community Association, Inc. this 23 day of October, 2013.

WITNESS:

  
\_\_\_\_\_  
  
\_\_\_\_\_

DEL WEBB COMMUNITIES, INC.,  
an Arizona Corporation

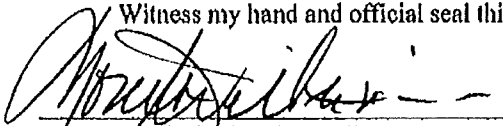
By:   
\_\_\_\_\_  
William Cutler  
Its President

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

ACKNOWLEDGMENT

I, the undersigned Notary Public, hereby certify that William Cutler, President of Del Webb Communities, Inc., personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 23<sup>rd</sup> day of October, 2013.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 3/2/22

F:\ellen\S\Sun City\CC R s\CC&R.Second Amendment.10.10.2013.doc