

MARGARET L BAILEY  
DORCHESTER COUNTY  
REGISTER OF DEEDS

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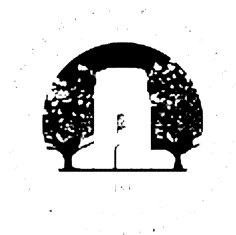
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\*\*\* ELECTRONICALLY RECORDED DOCUMENT \*\*\*

Instrument #:	2023001157	
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\*\*\* EXAMINED AND CHARGED AS FOLLOWS \*\*\*

Recording Fee: \$25.00  
Tax Charge: \$0.00



Margaret Bailey

Margaret Bailey - Register of Deeds

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA, 1976 (AS AMENDED)**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**SUMMER'S BEND TOWNHOMES**

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**PORTIONS OF THIS AGREEMENT ARE SUBJECT TO MANDATORY ARBITRATION.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF SOUTH CAROLINA.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

**NOTICE: THIS PROPERTY IS SUBJECT TO THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS, AND ANY SUBSEQUENT AMENDMENTS THERETO, DATED MAY 3, 2007 AND RECORDED MAY 17, 2007 IN BOOK 6026, PAGE 159 IN THE REGISTER OF DEEDS FOR DORCHESTER COUNTY.**

**After Recording, Please Return To:**

Buist, Byars & Taylor, LLC  
652 Coleman Blvd., Suite 200  
Mt. Pleasant, SC 29464



**“Adjoining Lots”** shall mean and refer to two (2) Lots upon which a single building has been constructed.

**“Articles of Incorporation”** or **“Articles”** shall mean and refer to the Articles of Incorporation of the Association filed in the office of the South Carolina Secretary of State, as amended from time to time in accordance with the terms thereof, the By-Laws and this Declaration. A copy of the initial Articles of Incorporation is attached to this Declaration as Exhibit C.

**“Area of Common Responsibility”** shall mean and refer to the Common Areas, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person or entity become the responsibility of the Association.

**“Assessment”** shall mean and refer to any Lot Owner’s share of the Common Expenses, Attached Townhome Expenses, or any other charges from time to time assessed against an Owner by the Association in the manner herein provided. **“Assessment”** shall also mean and refer to Declarant’s share of the Common Expenses, Attached Townhome Expenses, or other charges from time to time assessed against Lots owned by Declarant. The term “Assessments” may also sometimes mean and refer to, collectively, the “Annual Assessment” or “Special Assessments” as the context herein shall so indicate.

**“Association”** shall mean and refer to Summer’s Bend Townhomes Owners Association, Inc., a non-profit corporation organized under the laws of the State of South Carolina, its successors and assigns.

**“Association Documents”** shall include this Declaration and any and all other documents, instruments, permits and agreements, whether now or hereafter existing, relating in any way to the covenants, conditions and restrictions imposed or to be imposed upon the Property or the Lots and the Improvements, to the extent necessary or useful for maintenance, operation and completion of said Improvements

**“Attached Townhome”** means a two-story Dwelling which has no Dwellings located above or below it and which shares one or more Party Walls with adjacent Dwelling(s).

**“Attached Townhome Expenses”** means all actual and estimated expenses which the Association incurs or expects to incur to provide Attached Townhome Services for the benefit of Owners of Attached Townhomes, including any of the following in connection therewith: Maintaining (including reasonable reserves for capital improvements, repairs and replacements) and providing labor, materials, goods, services, or benefits in connection with Attached Townhome Services, all as may be determined from time to time by the Board of Directors of the Association in accordance with this Declaration.

**“Attached Townhome Services”** means those goods, services, items or benefits provided by the Association for the benefit of the Attached Townhomes pursuant to this Declaration, any Supplemental Declaration or agreement approved by a majority of the voting interests of the Attached Townhome Owners present in person or by proxy at a meeting of the Attached Townhome Owners. Attached Townhome Services include the following:

1. Exterior Maintenance for Attached Townhomes, as defined below.
2. Procurement and maintenance of the insurance coverage described herein; and
3. Restoration of those portions of the Attached Townhomes when damaged by casualty or loss as provided in Article VIII of this Declaration.

The Association has the right in its sole and absolute discretion to change, add, modify, expand, reduce or eliminate Attached Townhome Services upon not less than ninety (90) days prior written notice to the Owners.

**“Board of Directors”** and/or **“Board”** shall mean and refer to the Board of Directors of Summer’s Bend Townhomes Owners Association, Inc., as more fully set forth herein.

**“By-Laws”** shall mean and refer to the By-Laws of the Association which govern the administration and operation of the Association, as may be amended from time to time, which said By-Laws are attached hereto as Exhibit D and incorporated herein by reference.

**“Buffer Area”** shall mean that portion of the Property lying generally within one hundred feet (100’) of the mean high water mark of the Ashley River and within fifty feet (50’) of adjacent marsh land and depicted on the Buffer Planting Plan attached to and made a part of the VCC Declaration, which shall remain in its natural undisturbed state except as may be specifically allowed in this Declaration or in the VCC Declaration.

**“City”** shall mean and refer to the City of North Charleston, South Carolina and its respective Governmental Authorities.

**“Common Area”** or **“Common Areas”** shall mean and refer to any and all real and personal property now or hereafter deeded or leased to, or which is the subject of a use agreement with, the Association, and wherein the property therein described is specifically denominated to be a part of the Common Areas. The Common Areas shall include any park, open green spaces, project signage and lighting, and stormwater control measures located within the Property and which are not maintained by the County or other governmental authority. The Association’s Common Areas shall specifically include the Stormwater Facilities. The designation of any land and/or improvements as a Common Area will not mean or imply that the public at large acquires any easement of use or enjoyment therein. All Common Areas are to be devoted to and intended for the common use and enjoyment of the Declarant, Owners, and their respective guests, and invitees. The Common Area does not include the Common Facilities or any other common area governed by the Summer’s Bend Condominium Master Deed and the Summer’s Bend Condominium Association.

**“Common Expense(s)”** shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association in connection with the administration of Summer’s Bend Townhomes, in the implementation, compliance and enforcement of the terms, provisions, and intent of this Declaration, the By-Laws, the VCC Declaration and the Covenant to Share Costs.

**“Common Facilities”** shall mean and refer to the “Common Facilities” described in the Covenant to Share Costs, including the roads, postal kiosk, the “Summer’s Kitchen” with pool facility located within the Summer’s Bend Condominium, the Stormwater Facilities for the Summer’s Bend Condominium, those portions of the Shoreline Property located within the Summer’s Bend Condominium and any gatehouse or other controlled access facilities located within the Summer’s Bend Condominium.

**“Common Facilities Assessments”** shall mean and refer to levied against the Lots from time to time by the Summer’s Bend Condominium Association pursuant to the Covenant to Share Costs.

**“County”** shall mean and refer to Dorchester County, South Carolina and its respective Governmental Authorities.

**“Covenant to Share Costs”** shall mean and refer to that certain Declaration of Covenant to Share Costs, Easements and Limitations by and between Ashley River Town Homes, LLC and the Summer’s Bend Condominium Association recorded in the R.O.D. Office on October 1, 2008 in Book 6813 at Page 230.

**“Declarant”** shall mean and refer to Ashton Charleston Residential L.L.C., a South Carolina limited liability company, its successors and assigns.

**“Declaration”** shall mean and refer to this Declaration and any supplements and amendments thereto recorded hereinafter in the R.O.D. Office.

**“Director”** shall mean and refer to members, or any one member, of the Board of Directors of the Association.

**“Eligible Mortgage Holder”** shall mean and refer to those holders of first mortgages secured by Lots within the Subdivision who have requested notice of certain items as set forth in this Declaration.

**“Exterior Maintenance”** means labor, materials, goods and services associated with those maintenance, repair or upkeep obligations attributed to the Association as set forth in the table attached hereto and incorporated by reference herein as Exhibit E. The cost of Exterior Maintenance for the Attached Townhomes shall be an Attached Townhome Expense. All maintenance of an Attached Townhome other than the Exterior Maintenance performed by the Association pursuant to Article IX and Exhibit E shall be the Owner’s responsibility.

**“Final Plat”** shall mean and refer collectively to that certain plat recorded September 30, 2008, in Plat Book L, Page 113 in the R.O.D. Office, that certain plat recorded September 23, 2022, in the R.O.D. Office in Plat Book O at Page 11, and any additional plat of the Property recorded in the R.O.D. Office in furtherance of the development scheme for the Property, as it exists from time to time.

**“Governmental Authorities”** shall mean and refer to shall mean any governmental office, officer, or official (including health and environmental) whose consent or approval is required as a prerequisite to the commencement or continuation of the construction of the Improvements or to the occupancy of the Property or Improvements or to the performance of any obligation or Covenant hereunder.

**“Home” or “Dwelling”** means any plot of land within the Property, whether or not Improvements are constructed thereon, which constitutes or will constitute, after the construction of Improvements, a single dwelling site (whether an attached or detached dwelling), as shown on any plats for the Property, or amendments or supplements thereto, recorded in the land records for the Property where the Property is located. If a Home is attached by party wall(s) to one or more other dwellings, the boundary between Homes shall be a line running along the center of the party wall(s) separating the Home. The ownership of each Home shall include the exclusive right to possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Home (including, but not limited to, furnaces, compressors, conduits, wires and pipes), regardless of the location of such units, and of any patio, sunroom or any similar appurtenance as may be attached to a Home when such Home is initially constructed. The ownership of each Home shall also include, and there shall pass with each Home as an appurtenance thereto, whether or not separately described, all of the right, title, interest and membership of an Owner in the Association. The Association acknowledges and consents that certain appurtenances described above may encroach upon the Common Area, but that such encroachments are not a detriment, but rather a benefit to the Property. Consequently, such appurtenances shall be considered a part of the Home, maintained as provided in the Declaration and allowed to encroach upon the Common Area; provided, however, no such appurtenant structure may be altered, changed or enlarged except in accordance with this Declaration.

**“Improvement”** means any building, wall, patio area, driveway, walkway, antenna, sign, mailbox, pool, tennis court, or other structure or improvement, including trees, plants, shrubs, flowers and other landscaping, which is constructed, made, installed, placed or developed within or upon, or removed from, and portion of the Property, or any change, alteration, addition or removal of any structure or improvement other than normal maintenance and repair which does not materially alter or change the exterior appearance, condition and/or color of the same.

**“Legal Fees”** mean reasonable fees for attorney and paralegal services incurred in connection with: (i) negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and post-judgment proceedings; (ii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and (iii) court costs through and including all trial and appellate levels and post-judgment proceedings.

**“Lot”** shall mean and refer to any lot, whether improved or unimproved, which may be independently owned and conveyed, and which is shown on a recorded plat of the Property and designated for use as a building area site for the construction of a Dwelling; such term shall also include, without limitation, any contiguous or non-contiguous portion of a Lot ancillary to the use allowable on the remainder of the Lot, together with any and all Improvements located therein or thereon.

**“Member”** shall mean and refer to all Members of the Association as provided herein.

**“Membership”** shall mean and refer to membership by an Owner and/or Declarant in Summer’s Bend Townhomes.

**“Occupant”** shall mean and refer to any person, including, without limitation, any Owner, occupying or otherwise using a Lot within the Property, and their respective families, servants, agents, guests, and invitees.

**“Owner”** or **“Lot Owner”** or **“Attached Townhome Owner”** shall mean and refer to the record owner (whether one or more persons, firms, associations, corporations, partnerships, trusts, trustees, or other legal entities) of the fee simple title to any Lot; notwithstanding any applicable theory of a mortgage, such terms shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding or instrument in lieu of foreclosure; nor shall the term **“Owner”** mean or refer to any lessee or tenant of an Owner. When reference is made herein to Owner(s)’ voting rights, all Lot Owners of one Lot, when more than one Owner holds record title, shall have, collectively, such voting rights in the Association as may be attached to the Lot.

**“Person”** shall mean any individual, corporation limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity.

**“Property”** or **“Subdivision”** shall mean and refer to the property described on Exhibit A attached hereto and incorporated herein by reference which is hereby subjected to this Declaration.

**“R.O.D. Office”** shall mean and refer to the Office of the Register of Deeds for Dorchester County, South Carolina.

**“Shoreline Property”** shall mean those portions of the Property identified as the “Shoreline Property” in the VCC Declaration.

**“Stormwater Facility”** or **“Stormwater Facilities”** will mean and refer to any one or more of the following that serves or benefits any part or all of the Property or is required by applicable legal requirements in connection with any part or all of the Property, whether located in the Property or outside of the Property: (i) “drainage easements” (also referred to herein as “stormwater easements” or “stormwater drainage easements”) that are shown on any Final Plat or established by written instruments recorded in the R.O.D. Office, and which either are located in whole or in part on the Common Area or benefit or serve more than one (1) Home; and (ii) all stormwater management facilities for the Property including ponds, man-made or natural areas and/or planted or landscaped areas into which stormwater drains, or in which stormwater is collected, or from which it is discharged, drains, pipes, conduits, inlets, swales, creeks, streams, channels, dams, ditches, filters, buffers, bio-retention areas, level spreaders, constructed wetlands, and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging and/or managing stormwater. Except as otherwise provided herein, Stormwater Facilities are part of the Common Area, and maintenance of Stormwater Facilities is a Common



Expense. References in the Declaration to stormwater management include all applicable Stormwater Facilities, Stormwater Facility Agreements and Stormwater Maintenance Manuals.

**“Stormwater Facility Agreements”** (which term includes any other agreement under applicable legal requirements, by whatever name denominated therein, relating to Stormwater Facilities) will mean and refer to any agreement required by any applicable legal requirement between or among any combination of the City, the County, the Declarant, the Association, one or more Owners, or any adjoining landowner, relating to maintenance of Stormwater Facilities.

**“Stormwater Maintenance Manual”** (which term includes any other instrument or document under applicable legal requirements, by whatever name denominated therein, addressing the same or similar matters) will mean and refer to the specific requirements for maintenance of Stormwater Facilities as required by the City.

**“Summer’s Bend Condominium”** shall mean and refer to the horizontal property regime established by the Summer’s Bend Condominium Master Deed.

**“Summer’s Bend Condominium Association”** shall mean and refer to Summer’s Bend Condominium Association, a South Carolina non-profit corporation, the governing body for the Summer’s Bend Condominium.

**“Summer’s Bend Condominium Documents”** shall mean and collectively refer to the Summer’s Bend Condominium Master Deed, the Summer’s Bend Condominium Association bylaws, the Summer’s Bend Condominium Association articles of incorporation, rules and regulations of the Summer’s Bend Condominium Association, and resolutions adopted by the board of directors of the Summer’s Bend Condominium Association, as any such documents may be amended and supplemented from time to time.

**“Summer’s Bend Condominium Master Deed”** shall mean and refer to that certain Master Deed of Summer’s Bend on the Ashley Horizontal Property Regime by Ashley River Town Homes, LLC recorded in the R.O.D. Office on June 27, 2007 in Book 6105 at Page 1, as amended or supplemented from time to time.

**“Supplemental Declaration”** shall mean and refer to any amendment to this Declaration filed in the R.O.D. Office, which makes any changes hereto.

**“Turnover Date”** shall mean and refer to the date which is the earlier of (i) the date that is twenty (20) years from the recording of this Declaration, (ii) the date which is three (3) months after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor Declarant, of Lots representing one hundred percent (100%) of the total number of Homes intended for development on all of the Property, or (iii) the date which is three (3) months following the date on which Declarant records in the R.O.D. Office a document relinquishing its control of the Association to the Members at large.

**“VCC Declaration”** shall mean that certain Declaration of Covenants and Restrictions by Ashley River Town Homes, LLC dated May 3, 2007 and recorded in the R.O.D. Office on May 17, 2007 in Book 6026 at Page 159.

## **ARTICLE II**

### **THE PROPERTY**

#### Section 2.01. The Property.

The real property which is and shall be held, transferred, sold, conveyed, leased, mortgaged, and occupied subject to this Declaration is known generally as “Summer’s Bend Townhomes” located in Dorchester County, South Carolina, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Property” or the “Subdivision”). Due to the private, exclusive, and unique nature of Summer’s Bend Townhomes, no additional properties may be subjected to the terms and provisions of this Declaration.

## **ARTICLE III**

### **COVENANTS, RESTRICTIONS, AND AFFIRMATIVE OBLIGATIONS APPLICABLE TO ALL PROPERTIES IN SUMMER’S BEND TOWNHOMES**

The Declarant has established the within additional covenants in order to create an exclusive, private community which is unique in design, environmentally sensitive, aesthetically appealing, tranquil, functional, and convenient.

#### Section 3.01. Miscellaneous Covenants, Conditions and Restrictions.

- (a) Use. The Property shall be used exclusively for residential purposes.
- (b) Maintenance. Upon the completion of construction of Improvements on any Lot, each Owner, at the sole expense of such Owner, shall be responsible for maintaining such Improvements in comparable or better appearance and condition as at the time of initial completion of construction thereof, normal wear and tear between routine maintenance and repair being excepted. Maintenance responsibilities of the Owners and the Association are set forth in Article IX herein and on Exhibit E. Notwithstanding the foregoing, the Association shall initially budget for, and include as a Common Expense, the cost of roof replacement.
- (c) Landscape Areas. Any portion of the Property shown on the Final Plat as a landscape area, landscape easement, buffer, perimeter protective yard, or otherwise established to provide a landscaped or natural area buffer between the Homes or between other portions of the Property and the adjacent properties shall be used and maintained by the Association either substantially in the same fashion as constructed by Declarant or in its natural state as required by the zoning and development regulations of the applicable Governmental Authorities, but in any case as provided in Article XII herein if applicable.

### Section 3.02. Subdivision, Re-Platting, and Lot Specifications.

(a) No Lot shall be subdivided or its boundary lines changed, nor shall application for same be made to the County of Dorchester, except with Declarant's prior, written consent, which consent may be granted or withheld in the sole discretion of Declarant, its successors and assigns. However, Declarant hereby expressly reserves for itself, its successors and assigns, the right to replat any of the Property if Declarant determines, in its sole discretion, that the reconfiguration, alteration, or other adjustment of Property lines and boundaries would improve or enhance the value and/or aesthetic appearance of Summer's Bend Townhomes or any part thereof; provided that such replatting does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Area as set forth in this Declaration, and does not adversely affect the title to any Lot. Provided, however, that upon the execution of a contract of sale between Declarant and a proposed purchaser of any Lot, Declarant shall no longer have the right to replat or otherwise alter the property lines of such Lot under contract, unless such proposed purchaser defaults under the terms of the contract.

(b) Any Lot may, with Declarant's written approval, be combined to create a larger Lot, and in such instance, Declarant may alter, without limitation, the specifications and guidelines affecting the Lot.

### Section 3.03. Easements.

There are hereby reserved for the benefit of the Association and its successors and assigns, over, under, upon and across each Lot in Summer's Bend Townhomes, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement to enter upon any unimproved portions of any Lot for the purpose of planting and/or maintaining landscaping, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, dead or dying trees, or other unsightly growth, removing trash, and/or such other related purposes as the Association, in its sole discretion, deems necessary and essential to maintain the quality and distinctive character of the Property.

### Section 3.04. Easement for Exterior Maintenance and Landscaping.

Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Area, the perpetual nonexclusive right and easement upon, over and across each Lot and any private drives for the Association's maintenance and repair obligations set forth herein, including all related activities and Improvements. In addition, all Lots shall be subject to a perpetual easement in favor of the Association for maintenance, management, repair, landscaping, and non-exclusive ingress, and egress. This easement right includes rights of contractors and repair persons, including, but not limited to, their employees, personnel, agents and representatives, as well as Association agents and representatives, engaged by the Association to enter upon any and all Lots from time to time as necessary in order to perform any of the above repair or maintenance work, or such other work as may be included in the Common Expenses of the Association. Owners of the Lots shall not impair access to, or otherwise alter in any way, said Lots, drives, streets or landscaping.

Section 3.05. Easement Restrictions.

The easements and rights created in this Article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the R.O.D. Office or which may exist in favor of property owners adjoining the Subdivision.

**ARTICLE IV**

**SUMMER'S BEND TOWNHOMES OWNERS ASSOCIATION**

Section 4.01. Establishment and Purpose of the Association.

Summer's Bend Townhomes is a private, exclusive community carefully and comprehensively planned and developed by Declarant so as to preserve, protect, complement, and enhance the natural ambiance of the Property.

Declarant has established the Association for the purpose of exercising powers of owning, maintaining, repairing, reconstructing, improving, and administering the Common Areas, providing common services, administering and enforcing the within covenants and the conditions and restrictions set forth herein, levying, collecting, and disbursing the Assessments and charges herein imposed, holding, owning, and utilizing the easements it may enjoy, and for other purposes.

It is Declarant's intention to convey a perpetual easement to the Association over the Common Areas and any and all Improvements and personal property associated therewith, which are to be held and administered in accordance with this Declaration. Declarant further reserves the right to convey or transfer to the Association any and all rights and obligations of Declarant set forth herein. The legal costs and expenses of such conveyances shall be borne by Declarant.

Section 4.02. Membership and Voting.

Each Member shall be entitled to the benefit of, and be subject to, the provisions of Association Documents. The qualification of Members of the Association, the manner of their admission to Membership, the manner of the termination of such Membership and the manner of voting by Members shall be established and terminated as set forth below and in the By-Laws:

(a) Membership in the Association for Lot Owners other than Declarant shall be established by the acquisition of Lot Owners ownership of fee title to a Lot as evidenced by the recording of an instrument of conveyance in the R.O.D. Office for the county in which the Property is located. Otherwise, voting rights attributable to a Lot Owners ownership interest shall vest upon the recording of this Declaration. Where title to a Lot is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.

(b) No Member may assign, hypothecate or transfer in any manner his Membership in the Association except as an appurtenance to his Lot.

(c) Any Member who conveys or loses title to a Lot by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from ownership of such Lot, but shall remain personally liable to the Association for any unpaid Assessments levied upon the subject Lot which accrue during the period of such Person's ownership of the Lot.

(d) There shall be only one (1) vote for each Lot. If there is more than one Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-Owner as to a dispute between the co-Owners of a Lot regarding their vote prior to the casting of that vote, the vote of any co-Owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

(e) Unless a different percentage is specifically required by any other provisions of the Association Documents, a quorum shall consist of persons entitled to cast at least 43 of the 64 votes of the Members, which may be reduced as provided in the By-Laws.

#### Section 4.03. Board.

The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the By-Laws.

#### Section 4.04. Duration of Association.

The duration of the Association shall be perpetual, as set forth in the By-Laws.

#### Section 4.05. Powers and Functions of the Association.

The Association shall be and is hereby authorized and empowered to perform any and all of the following acts and services, the costs of which shall be a Common Expense.

(a) Clean-up, maintenance, landscaping, improvement, and replacement of: all Common Areas and Improvements thereon, therein and thereunder, including but not limited to entrance ways, access roads, sidewalks, detention areas, rights-of-way, entrance signs, roadway signs, security and related systems, utility, drainage, erosion and flood control facilities, viewing areas and facilities, walkways and leisure trails, footbridges, residual areas, landscaped areas, vegetative buffers, and all other systems or areas which are a part of or appurtenant to the Common Areas and which are not maintained by Declarant or a public authority, a public service district, a public or private utility or other person(s) or entities.

- (b) Clean-up, landscaping, and maintenance of landscaping on each Lot within the Subdivision in order to maintain and ensure the highest possible standards of appearance throughout the Subdivision. Such responsibilities include, but are not limited to, mowing, planting, pruning of trees and bushes, fertilizing, clearing, trimming, mulching, and applying pesticides and chemicals.
- (c) Take any and all actions necessary to enforce the within covenants, conditions, and restrictions, and to perform any of the functions or services required or delegated to the Association under this Declaration and any amendments or supplements thereto.
- (d) Provide or contract for security, landscaping, and managerial services and other administrative services including, but not limited to legal, accounting, and financial services, communication services informing Members of activities, notice of meetings, referendums, etc.
- (e) Provide liability, hazard, or other insurance covering Improvements and activities on Common Areas and providing liability and errors and omission or similar insurance for the Directors and officers of the Association as the Board may deem appropriate.
- (f) Purchase and acquire personal property and equipment as necessary for the proper maintenance of Common Areas.
- (g) Clean-up, maintenance, landscaping, improvement and replacement of pedestrian access areas, residual tracts, walkways and leisure trails, boardwalks, and all other areas within the Property or in a reasonable proximity thereto should, in the opinion of the Association, their deterioration affect the appearance of the Property.
- (h) Insect, pest and wildlife control to the extent that measures in addition or supplemental to those services as may be provided by the applicable Governmental Authorities are deemed necessary or desirable in the discretion of the Board of Directors.
- (i) Construct Improvements on residual areas, Common Areas, and such other areas within the Property as the Board of Directors deems appropriate, necessary, or essential for the Subdivision.
- (j) Maintenance, repair, and replacement of any drainage easements, Improvements, and/or facilities, and erosion and flood control Improvements located within or adjacent to the Subdivision to the extent that such services are not performed by the Declarant.
- (k) In the event the Board of Directors determines that any Lot Owner has failed or refused to comply properly with Owner's obligations with regard to the maintenance, cleaning, repair, and replacement of Improvements and/or Lot or landscaped areas as set forth herein, then the Association, except in the event of an emergency situation, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail the extent of such maintenance, cleaning, repair, or replacement deemed necessary, and such Owner

shall have ten (10) days therefrom within which to complete the same in a good and workmanlike manner.

(l) In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the Assessment to which such Owner and Owner's Lot is subject, and shall become a lien against such Lot in favor of the Association.

(m) The Association is further authorized and empowered to perform or provide any and all other services necessary or desirable in the judgment of the Board of Directors to carry out the Association's obligations and duties under the terms and intent of this Declaration and the By-Laws.

#### Section 4.06. Rules and Regulations.

The Association, by and through its Board of Directors, may adopt from time to time, additional rules, regulations, and fee schedules governing the use of Common Areas and which such rules, regulations, and fee schedules shall be binding upon the Lot Owners and Occupants. The rules and regulations contained within the Summer's Bend Condominium Documents governing the use of the Common Facilities shall also be binding upon the Lot Owners and Occupants.

#### Section 4.07. Transfer Fees.

Upon the sale of a Lot or Home to a new Owner, a capital contribution in the amount of one quarter (1/4) of one percent (1%) of the sales price shall be assessed against the Property being transferred or sold (the "Capital Contribution"). The Capital Contribution shall be paid by the new Owner at closing and transferred to the Association's reserve fund. In addition, each new Owner shall pay, at Closing, an assessment equal to two (2) months of the current Annual Assessment. The foregoing notwithstanding, no transfer fees, capital contributions, or assessments shall be levied upon a transfer of any Lot or Home to the Declarant, any of their successors or assigns, or any Eligible Mortgage Holder that obtains title to any Lot or Home by foreclosure or deed-in-lieu of foreclosure.

#### Section 4.08. Covenant to Share Costs; Common Facilities.

All Owners irrevocably appoint the Board of Directors, coupled with an interest, as an agent of all the Owners (i) to receive notice from the Summer's Bend Condominium Association regarding any matter related to the Covenant to Share Costs or the Common Facilities, and (ii) to cast the votes attributable to the Lots regarding any matter related to the Covenant to Share Costs or the Common Facilities in such manner as a majority of the Board shall so decide. Such appointment of the Board of Directors shall survive the transfer of any Lot and is binding upon any transferee.

## ARTICLE V

### USE RESTRICTIONS

For purposes of this Article V, unless the context otherwise requires, the term “Owner” shall also include the family, invitees, guests, licensees, lessees and sublessees of any Owner, and any other permitted Occupants of a Home. The Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant contained in this Article V.

#### Section 5.01. Residential Use.

The Lots and Homes shall be for residential use only. No commercial occupation or activity may be carried on in the Property without consent of the Board except as such occupation or activity is permitted to be carried on by Declarant under this Declaration. In addition, temporary guests are permitted so long as they do not create an unreasonable source of noise or annoyance to the other residents of the Property. No more than one Home may be built on one Lot. This restriction shall not apply to any Lot which is utilized by Declarant or its designee(s), as a sales or leasing office.

#### Section 5.02. Nuisances.

No obnoxious or offensive activity shall be carried on about the Lots or in or about any Improvements, Homes, or on any portion of the Property nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Homes which is a source of annoyance to Lot Owners or Occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or the surrounding areas. Except as set forth herein, no trade, business, profession or commercial activity, or any other nonresidential use shall be conducted on the Property or within any Lot or Home without the consent of the Board. The foregoing shall not prohibit an Owner from leasing his Home. No loud noises or noxious odors shall be permitted in any Improvements, Homes or Lots. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Lot Owners.

#### Section 5.03. Outside Storage of Personal Property.

The personal property of any resident of the Property shall be kept inside the resident's Home or walled-in-yard, except for patio furniture and accessories, and other personal property



commonly kept outside, which must be kept in the rear of the Lot and must be neat appearing and in good conditions.

#### Section 5.04. Parking and Vehicular Restrictions.

Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, and other vehicles manufactured and used as private passenger vehicles, may be parked within the Property overnight without the prior written consent of the Board, unless kept within an enclosed garage or a designated parking area. In particular and without limitation, without the prior written consent of the Board, no vehicle containing commercial lettering, signs or equipment, and no truck, recreational vehicle, camper, trailer, boat, watercraft, aircraft, motorcycle, or vehicle other than a private passenger vehicle specified above, may be parked or stored outside of a Home overnight. No overnight parking is permitted on any streets, lawns, or areas other than driveways, designated parking areas and garages, without the consent of the Board. Notwithstanding the foregoing, automobiles owned by governmental law enforcement agencies are expressly permitted. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the Property. All vehicles parked within the Property must be in good condition and repair, and no vehicle which does not contain a current license plate or which cannot operate on its own power shall be parked within the Property outside of an enclosed garage for more than 24 hours, and no major repair of any vehicle shall be made on the Property. All-terrain vehicles and the like are not permitted to be operated within the Property or parked overnight outside of an enclosed garage, except with the prior written consent of the Board which may be withdrawn at any time, and any motorcycle or other permitted motorized vehicle must be licensed for street use and equipped with appropriate noise muffling equipment so that the operation of same does not create an unreasonable annoyance to the residents of the Property.

#### Section 5.05. No Improper Uses.

No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Violations of laws, orders, rules, regulation or requirements of any governmental agency having jurisdiction over the Property, relating to any Home shall be corrected by, and at the sole expense of the Owner of the Home.

#### Section 5.06. Trash and Other Materials.

Each Owner shall regularly pick up all garbage, trash, refuse or rubbish on his Lot, and no Owner or resident shall place or dump any garbage, trash, refuse, rubbish or other materials on any other portions of the Property. Garbage, trash, refuse or rubbish that is required to be placed at the front of the Lot in order to be collected may be placed and kept at the front of the Lot after 5:00 p.m. on the day before the scheduled day of collection, and any trash facilities must be removed

on the collection day. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters or garbage facilities shall be stored inside a Home or walled-in-area and screened from view and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

#### Section 5.07. Leases.

Lease or rental of a Home for residential purposes will also not be considered to be a violation of this covenant so long as the lease (A) is for not less than the entire Home and all the improvements thereon, (B) is evidenced in writing with a lease or rental agreement, (C) is not for less than an initial term of not less than six (6) months, and (D) is otherwise in compliance with rules and regulations as may be promulgated and published from time to time by the Declarant and the Board of Directors. Upon request, the Owner will provide the Declarant and Board of Directors with copies of such lease or rental agreement. Any Occupant will in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder. Notice of any lease; the name(s), home address(es), and home telephone number of the renter(s) or lessee(s); a complete copy of the lease (which may exclude the actual rent received by the Owner); and such additional information as may reasonably be required by the Board, shall be given to the Association or its designee by the Owner. The Owner must make available to the lessee copies of this Declaration and rules and regulations adopted hereunder. The Board may adopt reasonable rules and regulations regulating or restricting leasing and subleasing.

#### Section 5.08. Temporary Buildings, Etc.

No tents, trailers, shack or other temporary buildings or structures shall be constructed or otherwise placed upon the Property except in connection with construction, development, leasing or sales activities permitted by the Board. No temporary structure may be used as a Home.

#### Section 5.09. Garages.

No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space and no garage opening shall have a screen covering without the consent of the Board. All garage doors shall remain closed when vehicles are not entering or leaving the garage. This restriction shall not apply to any Lot which is utilized by Declarant or its designee(s), as a sales or leasing office.

#### Section 5.10. Animals and Pets.

Only common domesticated household pets may be kept on any Lot or in a Home, not to exceed a total of three (3) per Home without the prior consent of the Board but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised bred or maintained on any portion of the Property. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. Any pet must not be an unreasonable nuisance or annoyance to other residents on the Property. The Board may adopt

rules and regulations concerning animals which are more restrictive than the provisions of this Declaration including rules requiring that all animals be kept on a leash when on Common Area or outside a walled yard and that animals be restricted to designated areas within Common Area and that Lot Owners are responsible for cleaning up any mess that a pet created within any Lot or Common Area. The Board may require any pet to be immediately and permanently removed from the Property due to a violation of this Section.

Each Owner who determines to keep a pet thereby agrees to indemnify the Association and Declarant and hold them harmless against any loss or liability of any kind or character whatsoever arising from or growing out of his having any animal on the Property.

Section 5.11. Additions and Alterations.

No Home shall be enlarged by any addition thereto or to any part hereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, without the prior written approval of the Board, which approval may be withheld for purely aesthetic reasons.

Section 5.12. Increase in Insurance Rates.

No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

Section 5.13. Air Condition Units.

Only central air conditioning units are permitted, and no window, wall, or portable air condition units are permitted. No air-condition or heating apparatus, unit or equipment shall be installed on the ground in front of, or attached to, any front wall of any Home on a Lot.

Section 5.14. Clotheslines and outside Clothes Drying.

No clotheslines or clothespoles shall be erected, and no outside clothes-drying is permitted, except where such activity is advised or mandated by the Governmental Authorities for energy conservation purposes, in which event the Board shall have the right to approve the portions of any Lot used for outdoor clothes-drying purposes and the types of devices to be employed in this regard, which approval must be in writing.

Section 5.15. Outside Antennas and Satellite Dishes.

No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar apparatus or equipment unless: (i) such apparatus is eighteen inches (18") or less in diameter, (ii) the apparatus is screened from public view and located behind the Home either in the rear yard or affixed to the rear roof, (iii) the apparatus is not visible while standing at any point along the Lot boundary line in front of the house that abuts or is adjacent to a street,

right-of-way or sidewalk, and (iv) the Board has approved the location of the apparatus and the type of screening.

#### Section 5.16. Flagpoles.

No Owner may erect or install a flagpole or decorative banner on any portion of a Lot, including freestanding detached flagpoles or banners, and those that are attached to a Home, without the prior written approval of the Board.

#### Section 5.17. Garbage Containers, Oil and Gas Tanks, Air Conditioners.

All garbage and refuse containers, air condition units, oil tanks, bottled gas tanks, and all permanently affixed swimming pool equipment and housing shall be underground or placed in walled-in or landscaped areas approved by the Board so that they shall be substantially concealed or hidden from any eye-level view from any street or adjacent property.

#### Section 5.18. Signs.

Except for signs placed or constructed by Declarant, no signs shall be placed upon any Lot, and no signs shall be placed in or upon any Home which are visible from the exterior of the Home, without the prior written consent of the Board, with the exception of one (1) “for sale,” “for rent” or “open house” sign limited to six (6) square feet in size.

#### Section 5.19. Window Treatments.

Window treatments shall consist of blinds or other tasteful window coverings and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted.

#### Section 5.20. Surface Water Management.

No Owner or any other person shall do anything to adversely affect the surface water management and drainage of the Property, without the prior written approval of the Board, and any controlling governmental authority, including, but not limited to, the excavation or filling in of any Lot, provided the foregoing shall not be deemed to prohibit or restrict the initial construction of Improvements upon the Property by Declarant in accordance with permits issued by the controlling Governmental Authorities. In particular, no Owner other than Declarant shall install any landscaping or place a fill on the Owner’s Lot which would adversely affect the drainage of any contiguous Home. No structures, trees or shrubs shall be place on any drainage or utility easements, except by Declarant, without the prior written consent of the Board.

#### Section 5.21. Swimming Pools.

No swimming pools, spas, or the like, shall be installed without the consent of Board.

Section 5.22. Fences and Walls.

No fences (other than the privacy walls constructed by the Declarant) are permitted on any Lot.

Section 5.23. Mailboxes.

No mailboxes are permitted without the consent of the Board. The Association shall maintain, as a Common Expense, the cluster mail kiosk serving the Property.

Section 5.24. Open Fires.

Outdoor fireplaces are allowed with the Board approval. When a fireplace is in use, it must be monitored at all times and extinguished when not in use. Nothing herein shall be deemed to restrict the use of any customary barbecue for the cooking of food.

Section 5.25. Use of Trademark.

Each Owner and Occupant, by acceptance of a deed to any Lot, lands, tenements or hereditaments within the Property hereby acknowledges "Ashton Woods" and "Summer's Bend Townhomes," are service marks and trademarks. Each Owner and Occupant agrees to refrain from misappropriating or infringing these service marks or trademarks.

Section 5.26. Damage and Destruction.

In the event any Improvement contiguous with a Home is damaged or destroyed by casualty or for any other reason, the Owner of the Home shall repair and restore the damaged Improvement as soon as is reasonably practical to the same condition that the Improvement was in prior to such damage or destruction, unless otherwise approved by the Board.

Section 5.27. Interference with Common Area.

Notwithstanding any other provision of this Declaration, all Common Area shall be kept clear at all times of debris; no trees or shrubs shall be placed on any easements for ingress/egress, or in violation of any building setbacks; and no Improvements of any kind shall be erected, except by Declarant, or permitted to remain in or on Common Area.

Section 5.28. Owners' Insurance.

By virtue of taking title to a Home, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable Improvements on his or her Lot, less a reasonable deductible.

Section 5.29. Utility Access.

No one shall construct or install any fence, hedge, or similar structure on any portion of the Property in such a location as would interfere with or obstruct access to utility meters or sewer

cleanouts at the Property by any utility company or public works employees or agents. In the event of a violation of this provision, the Declarant, the Association, or the Commissioners of Public Works of the City of North Charleston, or the affected utility company, shall be entitled to enter upon that portion of the Property and remove the fence, hedge, or other obstruction and recover all costs incurred from the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Lot, the Owner shall proceed promptly to repair or to reconstruct the same in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration.

## **ARTICLE VI**

### **COVENANTS FOR ASSESSMENTS**

#### Section 6.01. Creation of the Lien and Personal Obligations of Assessments.

Declarant covenants, and each Owner of any Lot whether or not it shall be so expressed in Owner's deed or other conveyance, shall be deemed to covenant and agree to all other terms and provisions of this Declaration and pay to the Association:

- (a) Annual Assessments, charges or fines; and
- (b) Special Assessments or charges for capital improvements to or for maintenance of Common Areas and other Common Expenses, Attached Townhome Expenses, emergencies and other purposes.

The Assessments, together with any penalty (to be set by the Board), interest, costs, and Legal Fees shall be a charge upon the Lot and shall be a continuing lien on the Lot against which each such Assessment is made. Each such Assessment, together with interest, any penalty, costs, and Legal Fees, shall also be the personal obligation of the person(s) or entity who was the Owner of such Lot at the time the Assessment became due. The obligation for delinquent Assessments shall run with such Lot and shall pass to the Owner's successors in title. Upon written request, the Association shall provide or cause to be provided an accounting of an Owner's Assessments and any delinquency in the payment thereof. All reports of delinquency must be given subject to any state and federal laws regarding disclosure of a debtor's financial information.

#### Section 6.02. Purpose of Assessments.

The Assessments levied by the Association shall be used exclusively in connection with the operation and administration of Summer's Bend Townhomes. Such use shall include, but is not limited to, the payment of all Common Expenses and Attached Townhome Expenses; to promote and maintain the health, safety, welfare, and convenience of the Lot Owners and their guests and tenants; for the acquisition, construction, landscaping, repair, replacement, improvement, maintenance, and use of Common Areas; labor, equipment, materials, services, management, supervision, security, garbage service, water, sewer and utility service in connection

with the Common Areas; insurance premiums and deductibles; emergency repairs, reconstruction after casualty loss, and such other needs, without limitation, as may arise or as may be required in the sole discretion of the Board of Directors.

Section 6.03. Annual Assessment.

The Declarant initially and after the Turnover Date the Board of Directors shall determine the amount of the Annual Assessment based on the annual budget of the Association as provided herein. When the Board of Directors determines the Annual Assessment for the ensuing fiscal year, it shall cause to be prepared in connection therewith an annual budget showing the services provided by or on behalf of the Association and the costs thereof.

At least thirty (30) days prior to the end of the calendar year, the Board of Directors shall determine the amount of the Annual Assessment for the following calendar year, and shall notify every Owner subject thereto of their pro rata share, as set forth in this Article.

Section 6.04. Special Assessments.

(a) In addition to the Annual Assessments authorized above, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Areas, including, but not limited to, fixtures, personal property related thereto and for any other purposes not prohibited by this Declaration. Such Special Assessments may be collected by the Association on a monthly, quarterly, or annual basis.

(b) In addition to the Annual and Special Assessments authorized above, the Board of Directors may levy, in any fiscal year, an amount not to exceed one hundred (100%) percent of the Annual Assessment for such fiscal year a Special Assessment applicable to that year only for the purpose of maintenance or repairs of the Common Areas, including, fixtures, landscaping, and personal property related thereto; for the costs of the taxes for and the utilities supplied to the Common Areas; for any repairs, restoration, reconstruction, maintenance, or improvements made necessary by any emergencies including but not limited to damages resulting from storm, wind, earthquake, and flood as determined in the sole discretion of the Board of Directors, and for any other purpose not prohibited by this Declaration.

Section 6.05. Covenant to Share Costs.

As set forth in the Covenant to Share Costs, the Summer's Bend Condominium Association shall levy Common Facilities Assessments against all lots and units within the Summer's Bend Condominium and the Subdivision (including the Lots subject to this Declaration) to cover the costs incurred in maintaining, repairing, insuring, reconstructing, and replacing the Common Facilities. The notice of assessment and levy shall be delivered to the Association and the Association shall be responsible for collecting all Common Facilities Assessments from the Owners and remitting the amounts due to the Summer's Bend Condominium Association, and the aggregate of the Common Facilities Assessments against the Lots shall be considered a Common Expense.

Section 6.06. Effect of Non-Payment of Assessments.

Any Assessment (whether Annual, Special, or otherwise) not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen (18%) percent per annum; or (b) the maximum rate provided by applicable law. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against such Lot Owner's Lot in like manner as a mortgage of real property, or both. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of the outstanding Assessment(s) due and payable and collect the same through foreclosure. Penalties (as determined by the Board), interest, costs, and Legal Fees of such action or foreclosure shall be added to the amount of such Assessment, and collectable as such Assessment.

Section 6.07. Subordination of Lien.

The lien of Assessments provided for herein shall be subordinate to the lien of any first mortgage upon any Lot. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or deed-in-lieu of foreclosure shall extinguish the lien of such Assessments as to the payment of the portion thereof which became due prior to such sale or transfer. No mortgagee that takes title to a Lot as a result of exercising its rights and remedies under its mortgage shall be liable for unpaid assessments accruing prior to such acquisition of title. No such sale or transfer shall relieve any subsequent Owner of such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 6.08. Allocation of Assessments Among Lot Owners.

All Assessments provided for herein shall be divided among the Lots equally.

Section 6.09. Indemnification.

The Association covenants and agrees that it will indemnify and save harmless Declarant, and the Directors of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Property or the appurtenances thereto from and against all costs, Legal Fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. The costs of fulfilling the covenant of indemnification therein set forth shall be deemed to be operating expenses.

Included in the foregoing provisions of indemnification are any expenses that Declarant may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association.



## ARTICLE VII

### COMMON AREAS AND COMMON FACILITIES

All Common Areas are ultimately intended for the common use and enjoyment of the Association, the Lot Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, subject to any operating rules promulgated by the Association, its successors and assigns, and nothing contained herein or set forth on any plat shall in any way or manner be construed as a dedication to the public of any of the Common Areas and other such areas and amenities associated therewith.

#### Section 7.01. Members' Easements of Enjoyment.

Subject to the provisions of this Declaration and the rules and regulations of the Association, every Owner shall have a non-exclusive easement of enjoyment in and to the Common Areas, and such easement shall benefit and be appurtenant to and shall run with the title to each and every Lot. It is the intention of Declarant that such rights of enjoyment shall be and are hereby deemed for the use and benefit of the Lot Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, and successors-in-title, subject to such rules and regulations as may be established by the Board of Directors for the Association.

#### Section 7.02. Perpetual Commercial Easement Over Common Areas.

Declarant agrees, to convey or cause to be conveyed to the Association (and the Association agrees to accept) as Common Areas, a perpetual commercial easement for use of all Common Areas, together with all structures, Improvements, appurtenances, landscaping, and infrastructure located thereon and/or thereunder now or at the time of such conveyance. Such easements will be conveyed prior to the conveyance of any Common Areas to any third party by the Declarant.

The Association shall be responsible for the maintenance, repair, and replacement of any areas intended for the common use and enjoyment of the Lot Owners once such areas have been conveyed or a perpetual commercial easement granted to the Association; provided, however, that Declarant first provides the Association with written notice of its intention to convey or to grant easements in favor of the Association over such areas for use as Common Areas.

#### Section 7.03. Extent of Members' Easements.

The Lot Owners' non-exclusive rights and easements for enjoyment of Common Areas shall be subject to the following:

- (a) The rights of Declarant to convey the Common Areas to the Association, or to any other non-profit agency or governmental authority, subject to Owner's approval rights, if required hereunder.

- (b) Non-exclusive, appurtenant, perpetual, permanent, assignable, transmissible, commercial easements in favor of Declarant and the Association for access, ingress, egress, and for the installation, maintenance, inspection, repair, and replacement of all utilities and services, irrigation systems, landscaping, and for all other lawful purposes deemed necessary, useful, or beneficial, in the discretion of Declarant and the Association, for the orderly development by third-party developers of Summer's Bend Townhomes; and the right of Declarant and of the Association, their successors and assigns, to grant, reserve, and accept such easements and rights-of-way through, under, over, and across the Common Areas.
- (c) The right of the Association, as provided in its By-Laws, to suspend the voting and enjoyment rights of any Owner for any period during which any Assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.
- (d) The right of the Declarant and the Association, as the case may be, to establish rules and regulations for the Common Areas, to charge Common Expenses and to prescribe fees and charges from time to time for use of any amenities which may now or hereafter be constructed on or near the Common Areas.
- (e) All applicable covenants, conditions, restrictions and easements of record, including, without limitation, all applicable regulations and ordinances adopted or as may be adopted in the future by any governmental agency or entity having jurisdiction over the Property. This Declaration is intended as a supplement to any such governmental regulations or ordinances, and shall be interpreted to be consistent therewith wherever possible.
- (f) The right of the Association, in accordance with its By-Laws, to borrow money from the Declarant or any lender for the purpose of improving and/or maintaining the Common Areas and providing services authorized herein, and in connection therewith, to mortgage all or part of the Common Areas to secure any such loan.

#### Section 7.04. Easements and Property Rights.

- (a) General Dwelling Easement. Every Owner is granted an easement over, under, and through the adjoining Lot for the maintenance or reconstruction of his Dwelling and other Improvements on his Lot, and for the limited purpose of installing, maintaining, and replacing any wiring, cables, conduit, pipes and meters serving his Dwelling, but only to the extent that the use of this easement is reasonable and necessary and provided the exercise of this easement does not damage or unreasonably or materially interfere with the use and enjoyment of the adjoining Dwelling. Reciprocally, the Owner of a Lot that contains any wiring, cables, conduit, pipes and meters that serve another Dwelling has a duty to refrain from interfering with or damaging those items. Absent emergency situations, requests for entry must be made to the Owner of the adjoining Lot in advance for a time reasonably convenient for the adjoining Owner, and consent for entry must not be unreasonably conditioned, delayed or withheld. If an Owner damages an adjoining Dwelling or Lot in exercising this easement, said Owner is obligated to restore the damage and the property so damaged to its original condition, at his expense and within a reasonable period of time.

(b) Party Wall Easement. A wall on or near the dividing line between two Adjoining Lots constitutes a “Party Wall” and to the extent not inconsistent with the remaining provisions of this Declaration, is subject to the general rules of law regarding party wall liability for property damage due to negligence, willful acts or omissions. Regardless of where the Party Wall is situated on the Adjoining Lots, the midpoint of the Party Wall is deemed to be the dividing line for purposes of this Section. Each Adjoining Lot sharing use of a Party Wall is granted an easement for (i) the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, minor shifting, settlement or movement of any portion of the Party Wall, so the encroachment may remain so long as the Party Wall stands substantially as initially constructed; and (ii) for the repair, maintenance, replacement and/or reconstruction of the Party Wall.

i. Right to Repair. If the Party Wall is damaged or destroyed, the Owner of either Adjoining Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Adjoining Lots, their successors and/or assigns, shall have the right to the full use of the repaired or rebuilt Party Wall.

ii. Maintenance Costs. The Owners of the Adjoining Lots shall share equally the costs of maintenance, repair, replacement and/or reconstruction of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions, and subject to each Owner’s responsibility for interior walls as set forth below. If an Owner or an Owner’s guests or invitees are responsible for damage to or destruction of a Party Wall, that Owner shall bear the entire cost of repair, reconstruction and/or replacement. The Owners of Adjoining Lots shall consult with one another prior to initiating any substantial maintenance, upkeep, repair or replacement of the Party Wall; provided, however, maintenance, upkeep, repair or replacement may be initiated by either Owner so long as such undertaking is reasonable and does not exceed the aggregate amount of \$1,000 per year or such other amount as may be agreed upon by the subject Adjoining Lot Owners. Payment therefor may be made in full by the Owner initiating such improvement whereupon the other Owner shall reimburse such Owner promptly upon receipt of an accounting of such costs and request therefor.

iii. Alterations. Neither Owner of an Adjoining Lot sharing a Party Wall may alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the Adjoining Lot.

iv. Interior Walls. The Party Walls between adjoining Dwellings are designed to be two independent wall systems, each of which must be maintained by the Owner of the Dwelling it serves, solely at such Owner’s expense.

(c) Owner’s Easements. Each Owner of a Lot shall have and is hereby granted the following non-exclusive easements, which shall be appurtenant to and run with the title of each Lot:

i. A non-exclusive, perpetual, permanent, commercial, easement over, upon and across the exterior areas of the Lots as may be reasonably required for access, ingress and egress to and from an Owner’s Lot and Joint Use Areas (as described and defined in Section 7.05 below).

ii. A non-exclusive, perpetual, permanent, commercial, easement for the existence and maintenance of any encroachment created by construction, settling and/or overhang by an Owner's Dwelling on any Adjoining Lot, now existing or as designed and constructed or as a result of any addition or improvement approved by Declarant. Such easement shall continue for so long as the encroachment exists. In the event any Improvement is partially or totally destroyed, then rebuilt, the Owners agree that minor encroachments due to reconstruction shall be permitted, and that a valid easement for such encroachment and the maintenance thereof shall exist so long as the Improvements remain.

(d) Easements for the Declarant and the Association. The Declarant hereby reserves for itself, its successors and assigns, and grants to the Declarant, its successors and assigns, and the Association, for itself, its successors and assigns, employees, agents and permittees from time to time, a non-exclusive, appurtenant, perpetual, permanent, assignable, transmissible commercial easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, over, under, upon and across the Common Areas and each of the Lots for access, ingress, egress and for the installation, maintenance, inspection, repair, and replacement of all utilities and services, irrigation systems, landscaping, for the installation, repair and maintenance of the Areas of Common Responsibility (as defined herein), and for all other lawful purposes deemed necessary, useful or beneficial, in the discretion of Declarant and/or the Association, for the orderly development of the Dwelling community, and/or to perform any duties or obligations of Declarant and/or the Association.

#### Section 7.05 Maintenance and Repair Obligations.

(a) Generally, the Association maintains the Areas of Common Responsibility and the Owners maintain the Dwellings. If a dispute arises regarding the allocation of maintenance or repair responsibilities, the dispute shall be submitted to the Association Board of Directors for resolution.

(b) The Association (with the consent of a majority of the Owners) may designate additional components as Areas of Common Responsibility in the event Declarant and/or Association determine, in their sole discretion, that the Owners are not providing adequate maintenance or repair. The shift of maintenance responsibility from the Owners to the Association creates a higher budget for the Association, and higher Assessments for the Owners. Because the designation of Areas of Common Responsibility is subject to change, the Association shall maintain at all times a dated list of such areas for distribution to the Owners and prospective purchasers. Additions, deletions or changes in designation must be (1) approved by the Association and a majority of the Lot Owners, (2) reflected in the Association's annual budget, reserve funds, Assessments, and (3) published and distributed to each Lot Owner.

(c) Areas of Common Responsibility. The Areas of Common Responsibility consist of the following components on and within the Lots:

- i. All exterior fences and courtyard walls;

ii. The Joint Use Areas which shall include all public and private areas reserved for the Owners and guests of the Owners. The Joint Use Areas shall be those areas designated as such by the Association (with the consent of a majority of the Owners);

iii. The roofs of the Dwellings shall be Areas of Common Responsibility; however, the Owners shall have the responsibility to perform routine maintenance as set forth in Article IX and on Exhibit E; and

iv. Any other components of the Dwellings or Lots designated by the Declarant or the Association, from time to time, as Areas of Common Responsibility, pursuant to this Section.

(d) Owner's Responsibility.

i. Each Owner is solely responsible for the maintenance and repair of the foundation and all structural components of such Owner's Dwelling on his/her Lot. However, in the event a licensed structural engineer determines that the failure to repair the foundation or a structural component for one Dwelling may adversely impact the Dwelling on the Adjoining Lot, then the cost of such repair shall be borne equally by both Owners.

ii. Otherwise, each Owner, at its sole expense, must maintain all aspects of his Dwelling and Lot, except any areas or components designated as an Area of Common Responsibility. Such maintenance shall include preventative maintenance, repair, and replacement as needed. Each Owner is expected to maintain his Dwelling at a level, to a standard, and with an appearance that is commensurate with the remainder of the Subdivision.

iii. Each Owner is responsible for his own willful or negligent acts and those of his family, guests, agents, employees or contractors, and shall not do or cause to be done any work that would jeopardize the soundness and safety of the Dwellings, adversely affect the appearance of the Dwellings, or impair any easement or right relating thereto.

Section 7.06 Common Facilities. The Common Facilities are located within the Summer's Bend Condominium and are not part of the Property subject to this Declaration. In accordance with the Covenant to Share Costs, all Owners and Occupants have common, exclusive easements to utilize the Stormwater Facilities for the Summer's Bend Condominium, have common easements of ingress, egress, access and use of the Common Facilities (including the roads, postal kiosk, the "Summer's Kitchen" with pool facility located within the Summer's Bend Condominium) and are subject to the conditions and limitations applicable to the Shoreline Property set forth in Article XII and the VCC Declaration. The Summer's Bend Condominium Association is obligated to maintain the Common Facilities in good repair and appearance. The rules and regulations contained within the Summer's Bend Condominium Documents governing the use of the Common Facilities shall also be binding upon the Lot Owners and Occupants.

## ARTICLE VIII

### INSURANCE AND CASUALTY LOSSES

#### Section 8.01. Insurance.

(a) Property Insurance. The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect casualty insurance at replacement value, in such form and with such coverage and deductibles as the Board deems appropriate for the benefit of the Association, insuring all insurable Improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief; such coverage, if available at reasonable costs, to be in an amount sufficient to cover the full replacement cost (without depreciation, to include anticipated costs of demolition and clearing prior to building, but subject to such deductible amounts as are deemed reasonable by the Board), of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) Liability Insurance. The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy of not less than \$1,000,000, covering all Common Areas and all damage or injury caused by the negligence of the Association, the Board, their Members, Directors, and officers, or any of their agents. Such public liability policy shall provide such coverages as are deemed necessary by the Board.

All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Lot Owners, and the cost thereof shall be a Common Expense. The Association shall have exclusive authority to adjust losses under such insurance policies with respect to the Subdivision; provided, however, that no mortgagee or other security holder of the Common Areas having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, relating thereto.

## ARTICLE IX

### MAINTENANCE AND REPAIR

#### Section 9.01. Standards for Maintenance; Restoration.

All maintenance and restoration of Property, Homes, Lots and the performance of landscaping and services related to the upkeep of the Property, Homes, and Lots shall be performed in a manner consistent with the general appearance of the developed portions of the Property and, as to Homes, the portion of the Property in which the Home is located. The minimum (though not sole) standard for the landscaping shall be the more stringent of the following: the community standard or the general appearance of the Property (and the applicable portion thereof as aforesaid) as initially landscaped (such standard being subject to being automatically raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly maintained). The minimum (though not sole) standard for maintenance and restoration of Property, Homes and Lots shall be the more stringent of the following: the community standard or the prevailing standard for

the portion of the Property in which the Home is located taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness, in the judgment of Declarant (so long as the Declarant is the Owner of a Home) or the Association. The person responsible for maintenance (the Association or Owner, as applicable) shall repaint, restrain, or refinish, as appropriate, the exterior portions of his Improvements (with the same colors and materials as initially used or as approved by Declarant or the Association) as often as is necessary to comply with the foregoing standards.

#### Section 9.02. Exterior Improvements.

(a) To the extent that the Association has the express obligation to perform maintenance for any Improvements to a Lot pursuant to this Declaration, any Supplemental Declaration, or other declaration of covenants and restrictions or similar recorded instrument, then the Association shall be responsible for performing those obligations which have been delegated to it in a neat, orderly and attractive manner consistent with the standards set forth in Section 9.01.

(b) The maintenance of all Improvements located on the Lot which has not been expressly delegated to the Association pursuant to this Declaration, any Supplemental Declaration, or pursuant to a declaration of condominium or declaration of covenants and restrictions or similar recorded instrument shall be the sole obligation of the Owner(s) of such Lot or Home. Other than the Lot landscaping maintained by the Association, each Owner shall maintain the trees, shrubbery, grass and other landscaping, and all parking, pedestrian, recreational and other open areas on his Lot in a neat, orderly and attractive manner and consistent with the standards set forth in Section 9.01.

(c) By way of example and not limitation, the Association shall provide Attached Townhome Services for each Attached Townhome. However, each Attached Townhome Owner is solely responsible for all other maintenance to the Home and Lot which is not expressly included in the definition of Attached Townhome Services. Without intending to limit the foregoing sentence, each Attached Townhome Owner shall maintain or cause to be maintained all portions of the Lot and Improvements thereon (including all appliances, interior walls, structural components, and plumbing, electrical and mechanical systems of his Dwelling) located on his Lot in a neat, orderly and attractive manner consistent with the standards set forth in Section 9.01.

(d) In the event that a Lot Owner fails to maintain his Lot or Home in accordance with this Declaration, the Association shall have the right but not the obligation, upon five (5) days' written notice to the Lot Owner, to enter upon the Lot for the purpose of performing the maintenance and/or repairs described in such notice to the Lot Owner, as applicable. The cost of performing such maintenance and/or repairs and the expense of collection (including, but not limited, Legal Fees) shall be assessed by the Association against the Lot Owner as a fine or as a portion of that Owner's Assessment, at the discretion of the Association. In order to discourage Owners from abandoning certain duties hereunder and, additionally, to reimburse itself for administrative expenses incurred, the Association may impose a surcharge of not more than twenty-five (25%) percent of the cost of the applicable remedial work, and shall not be inclusive of Legal Fees and costs. No bids need be obtained for any of the work performed pursuant to this Section and the

Person(s) performing such work may be selected by the applicable enforcing entity in its sole discretion.

#### Section 9.03. Lot Landscaping.

The Association shall maintain the Lot landscaping in the front, side and back yards of each Lot in a neat, orderly and attractive manner. The Association shall not be obligated to maintain any Lot landscaping in any enclosed or walled areas on a Lot. Nor shall the Association be required to perform Lot landscaping when an unsafe condition exists on a Lot, including a loose animal. The maintenance of the Lot landscaping may include, but shall not necessarily be limited to: the cutting or trimming of grass, trees and shrubs; the re-seeding, re-sodding or replanting of grass; the replanting trees or shrubs; the re-mulching and weeding of mulched areas, the repair and replacement of Lot irrigation installed by the Declarant or the Association; and the routine, customary application of fertilizer, pesticide and algaecide or fungicide, if necessary or recommended. The Association shall not be required to maintain any shrubbery, grass and other landscaping other than the usual and customary landscaping provided by the Declarant or its replacement provided by the Association. The Association shall have the right to remove any Lot landscaping which becomes a nuisance. The Association shall have the sole discretion to determine the time at which such Lot landscaping shall take place, the manner and materials to be used. The replacement of Lot landscaping of any particular Lot, which is necessitated by deterioration of existing materials, shall also be the responsibility of the Association.

#### Section 9.04. Remedies for Noncompliance.

In the event an Owner fails to maintain or cause to be maintained his Improvements and Lot in accordance with this Article, the Association shall have the right (but not the obligation), upon five (5) days' prior written notice to the Owner at the address last appearing in the records of the Association, to enter upon the Owner's Lot and perform such work as is necessary to bring the Lot or Improvements, as applicable, into compliance with the standards set forth in this Section. Such work may include, but shall not necessarily be limited to, the repainting or restaining of exterior surfaces of an Improvement, the repair of walls, roofs, doors, windows and other portions of Improvements on a Lot; and such other remedial work as is judged necessary by the applicable entity. The exercise of such remedies by the Association is at the Association's sole and absolute discretion and such exercise shall not obligate the Association to perform any maintenance work within the Subdivision. The remedies provided for herein shall be cumulative with all other remedies available under this Declaration or other applicable covenants or deed restrictions (including the imposition of a fine, inclusion of costs incurred in the Owner's Assessment, or the filing of legal or equitable actions).

#### Section 9.05. Costs of Remedial Work; Surcharges.

In the event that the Association performs any remedial work on an Improvement or Lot pursuant to this Article or any other applicable covenants or deed restrictions, the costs and expenses thereof shall be assessed by the Association against the Lot Owner as a fine or as a portion of that Owner's Assessment, as determined in the sole discretion of the Association, under this Declaration and may be immediately imposed by the Association. In order to discourage Owners from abandoning certain duties hereunder and, additionally, to reimburse itself for



administrative expenses incurred, the Association may impose a surcharge of not more than twenty-five (25%) percent of the cost of the applicable remedial work, such surcharge to be a part of the fine or Assessment levied against the Owner. No bids need be obtained for any of the work performed pursuant to this Section and the Person(s) performing such work may be selected by the applicable enforcing entity in its sole discretion.

Section 9.06. Right of Entry; Right to File Notices of Lien Rights.

(a) There is hereby created an easement in favor of the Association and its designees, over each Lot including the Home thereon for the purpose of entering onto the Lot in the performance of Lot Landscaping, Attached Townhome Services, and any other maintenance for which the Association has maintenance responsibility, or for which the Association is otherwise permitted or required to perform the maintenance and any other herein described, provided that the Association shall exercise such easement for entry into a Home during reasonable hours.

(b) In addition to the assessment and lien rights created hereby, the Association shall have the right to file notices of lien rights, claims of lien, amendments thereto, notices of termination and satisfactions as to any Lot for which it has the obligation to perform Lot Landscaping, Attached Townhome Services, or any other maintenance, or for which the Association is otherwise permitted or required to perform the maintenance.

Section 9.07. Other Services.

The Association may also assume maintenance responsibilities with respect to any other Lots in addition to those that may be designated in this Declaration or in any Supplemental Declaration. This assumption of responsibility may take place by agreement with Owners of Lots or because, in the opinion of the Board of Directors, the level and quality of service then being provided is not consistent with the standards set forth in this Section. All costs of maintenance pursuant to this Section 9.07 shall be assessed as a portion of the Assessment only against the Lots to which the services are provided, unless specifically provided otherwise in a Supplemental Declaration. The provision of services in accordance with this Section shall not constitute discrimination within a class.

Section 9.08. Common Area Maintenance.

The Association shall at all times maintain in good repair, operate, manage, insure, and replace as often as necessary the Common Areas and all Improvements situated on the Common Areas (upon completion of construction by Declarant or its affiliates, if applicable) in a neat, orderly and attractive manner consistent with the standards set forth in Section 9.01. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's, its affiliates' (and its and their predecessors') responsibility to the County, its respective governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas, including roads and entry features, and shall indemnify Declarant and its affiliates and hold Declarant and its affiliates harmless with respect thereto.

#### Section 9.09. Party Walls.

- (a) General Rules of Law to Apply. Each wall built as a part of the original construction of the Home which shall serve and separate any two (2) adjoining Homes shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.
- (c) Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- (d) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

#### Section 9.10. Rights of Governmental Authority.

Any governmental authority or agency, including, but not limited to the City of North Charleston and the County, their agents, and employees, shall have the right of immediate access to the Property at all times if necessary for the preservation of public health, safety and welfare. Should the Association or its Board fail to maintain the Common Areas in accordance with the specifications set forth in the applicable governmental approvals for the Property for an unreasonable time, not to exceed ninety (90) days after written request to do so, the City, the County and any other applicable governmental authority, by and through the affirmative action of a majority of authorized members, directors or officers, shall have the same right, power and authority as is herein given to the Association and its Board to enforce this Declaration and levy Assessments necessary to maintain the Common Areas, it being understood that in such event the applicable governing body may elect to exercise the rights and powers of the Association or its Board, to the extent necessary to take any action required and levy any Assessment that the Association might have taken, either in the name of the Association or otherwise, to cover the cost of maintenance of any Common Area.

#### Section 9.11. Maintenance of Stormwater Facilities.

If required by the County or the City, one or more Stormwater Facilities will be located on the Common Area subject to the easement rights of the County, the City, the Declarant, and the Association. The operation and maintenance of the Stormwater Facilities are subject to the terms of the Stormwater Facility Agreements and Stormwater Maintenance Manuals, if any. Upon dedication by Final Plat or conveyance in fee of the Common Area to the Association, the

Association shall operate and maintain the Stormwater Facilities and assume all obligations of Declarant under the Stormwater Facility Agreements and Stormwater Maintenance Manuals, if required by the County or the City. The Association shall charge Annual and/or Special Assessments, if necessary, to meet the Association's obligations under the Stormwater Facility Agreements and Stormwater Maintenance Manuals, if any. Notwithstanding any provision to the contrary contained in the Declaration and to the extent permitted by applicable law, the Association shall not enter into voluntary dissolution unless the Stormwater Facilities are transferred to a person or entity who assumes the maintenance obligation of the Stormwater Facilities as set forth in the Dorchester County Code, the City of North Charleston Code, the Stormwater Facility Agreements and the Stormwater Maintenance Manuals, if any, and that to the extent permitted by applicable law, the Association shall not sell, convey or otherwise transfer any interest in the Common Area on which the Stormwater Facilities are located to any party until the such party assumes the maintenance obligation of the Stormwater Facilities as set forth in the Stormwater Facility Agreements and the Stormwater Maintenance Manuals.

#### Section 9.12. Street Lighting.

If the street lighting is not maintained by the City or County, the Declarant reserves the right to require that the Association maintain street lighting (the term "street lighting" shall include light poles and appurtenances thereto, the light bulbs and wiring therefor) located within the Property and on nearby property and the cost of electricity therefor, and the cost and expense for the foregoing in such a case shall be a Common Expense, notwithstanding that such street lighting may be located on portions of the Property which are not owned by the Association or are not Common Areas.

#### Section 9.13. Attached Townhome Services.

In order to maintain a uniform appearance and high standards of maintenance, the Association shall perform the Attached Townhome Services for the Attached Townhomes in a neat, orderly and attractive manner consistent with the standards set forth in Section 9.01. The cost of performing the Attached Townhome Services shall be an Attached Townhome Expense, and the Owners of all Homes shall be obligated to pay, as part of their Assessment, for their proportionate share of the Attached Townhome Expenses. However, the Association shall be entitled to reimbursement from an Owner of an Attached Townhome where the Attached Townhome Service is required as a result of the deliberate, negligent or intentional acts of the Owner or its permitted users.

#### Section 9.14. Exterior Maintenance of Townhomes.

The Association shall have the sole discretion to determine the time at which Exterior Maintenance for the Attached Townhomes shall take place, the manner, materials and color to be used. If an Owner materially modifies the exterior of his or her Attached Townhome, then the Association shall not be responsible for maintenance of any modified portion of the Attached Townhome exterior however, the Owner shall not be relieved of its obligation to pay its portion of the Attached Townhome Expenses.

## ARTICLE X

### GENERAL PROVISIONS

#### Section 10.01. Duration.

The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or any Lot Owner, their respective, heirs, personal representatives, successors, successors-in-title and assigns, for a period of twenty-five (25) years from the date of recordation of this Declaration in the R.O.D. Office. Upon the expiration of said twenty-five (25) year period, this Declaration shall be automatically renewed and extended for additional successive ten (10) year periods, unless otherwise agreed to in writing by the Association.

#### Section 10.02. Amendments.

The process of amending or modifying this Declaration shall be as follows:

- (a) Prior to Turnover Date. Until the Turnover Date and except as specifically provided otherwise in this Article, Declarant may amend this Declaration without the approval of any Member provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Area as set forth in this Declaration, and the amendment does not adversely affect the title to any Lot. During any such period prior to the Turnover Date, this Declaration may not be amended without the written joinder of Declarant. Any other amendments of this Declaration prior to the Turnover Date shall require the vote or written consent of 43 of the 64 Lot Owners.
- (b) After the Turnover Date. After the Turnover Date, and except for the annexation of additional property, this Declaration may be amended by the consent of the Lot Owners owning 43 of the 64 Lots, evidenced by a writing signed by the required number of Lot Owners or by the affirmative vote of the required number of Lot Owners at any regular or special meeting of the Association called and held in accordance with the By-Laws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.
- (c) Scrivener's Errors. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and/or the Board thereafter and without the need of consent of the Lot Owners.
- (d) Amendments affecting Declarant's Rights. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall eliminate, modify, impair or prejudice the rights or priorities of Declarant or the Association, without the specific written approval of Declarant. Furthermore, notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which would prejudice the rights of a then Owner or his family members, guests, invitees and lessees to utilize or enjoy the benefits of the then existing Common Area unless the Owner or Lot Owners so affected consent

to such amendment in writing or unless such amendment is adopted in accordance with the procedure required for adoption of an amendment to this Declaration after the Turnover Date.

Section 10.03. Enforcement and Waiver.

Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association, or by any Owner to enforce in whole or in part any covenant or restriction herein contained, regardless of the number or kind of violations or breaches which may have occurred, shall in no event be deemed a waiver of the right to do so thereafter. This Declaration shall be governed by, construed, and is enforceable under the laws of the State of South Carolina.

Section 10.04. Interpretation.

The Board of Directors shall have the right to determine all questions arising in connection with this Declaration and the By-Laws and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding upon the Lot Owners. In all cases, the provisions of this Declaration and the By-Laws shall be given the interpretation or construction, in the opinion of the Board that will best preserve, protect, maintain, and benefit Summer's Bend Townhomes.

Section 10.05. Severability.

Should any covenant or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase, or term of this Declaration be declared or rendered void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

Section 10.06. Assignment.

Declarant reserves the right to assign to the Association or any one or more persons, firms, corporations, partnerships, or associations, any and all rights, powers, duties, easements and estates reserved or given to the Declarant in this Declaration, including, without limitation, the right to grant and assign utility easements from time to time over, under, and within Common Areas.

Section 10.07. Mortgage Provisions.

The following provisions are for the benefit of holders, insurers and guarantors of first mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

(a) Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage which provides a written request to the Declarant and/or Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its

Mortgage relates (thereby becoming an “Eligible Mortgage Holder”), will be entitled to timely written notice of:

Any delinquency in the payment of Assessments or charges owed for a Lot subject to the Eligible Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of 60 days, or any other violation of this Declaration or the By-Laws relating to such Lot or the Owner or Occupant which is not cured within 60 days;

Any lapse, cancellation, or material modification of any insurance policy maintained by the Association;

Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

(b) No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

(c) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Declarant and/or Association the name and address of the holder of any mortgage encumbering such Owner’s Lot.

#### Section 10.08. Notice.

Any notice, demand, or other instrument or written communication required or permitted to be given, served, made or delivered to Declarant hereunder may be given, served, made or delivered by service in person or by mailing the same by certified mail, return receipt requested, postage prepaid, or by overnight courier (e.g., Federal Express), addressed as follows:

DECLARANT:  
ASHTON CHARLESTON RESIDENTIAL L.L.C.  
877 Island Park Drive, Suite 200  
Daniel Island, SC 29492

or to such other addresses as Declarant may request by written notice to the Lot Owners. Any such notice, demand or other instrument or written communication mailed as above provided shall be deemed to have been given, served, made or delivered at the time that it was personally served or with sufficient postage placed in the mail, certified return receipt requested, or delivered to the overnight courier. Delivery of any notice, demand or communication to a Lot Owner shall be made in accordance with the By-Laws.

#### Section 10.09. Limited Liability.

Neither Declarant, nor the Association, nor the Board shall be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person; (b) caused in whole or in part from rain or other surface water or any tidal waters which may leak or flow from and/or on or along any portion of the Common Areas; or (c) caused by the malfunction or failure of any pipe, plumbing, drain, conduit, pump, road, appliance, structure, equipment, security system, utility line, or facility which the Association is responsible for maintaining.

The Declarant, the Board, and the Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Subdivision, nor any alleged trespass or damage resulting from entering upon any Lot under any authority provided herein and taking actions thereon as are allowable hereunder.

Further, no diminution, abatement or deferral of Assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of Declarant or the Association to take action or perform a function required to be taken or performed by Declarant or the Association under this Declaration, or for inconvenience or discomfort arising from the making of Improvements or repairs which are the responsibility of Declarant or the Association, or from any action taken by them to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay any such Assessment authorized herein being separate and independent obligations on the part of each Owner.

#### Section 10.10. Gender and Number.

All pronouns used herein shall be deemed to include the masculine, the feminine and non-personal entities, as well as the singular and plural wherever the context requires or permits.

#### Section 10.11. Construction.

The language in all of the parts of this Declaration and the By-Laws shall be construed as a whole according to its fair meaning, and not strictly for or against either Declarant, the Board, the Association, or the Lot Owners. By the acceptance and the recordation of a deed of conveyance to any Lot Owner in the R.O.D. Office, such Owner acknowledges that such Owner and/or his counsel have reviewed this Declaration, and that any rule of construction to the effect of ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Declaration, the By-Laws, or any amendments thereto.

## ARTICLE XI

### DISPUTE RESOLUTION PROVISIONS

#### Section 11.01 Introduction & Definitions.

The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article XI (individually, a “Party” and collectively, the “Parties”) agree to encourage the amicable resolution of disputes involving the Subdivision and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. The provisions of this Article XI shall be specifically enforceable under applicable law in any court having jurisdiction thereof. Notwithstanding anything contained in the Association Documents, this Article XI may only be amended with the prior written approval of the Declarant, and Owners holding 100% of votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

(a) “Claim” means:

(i) Claims relating to the rights and/or duties of Declarant, the Association, any managing agent engaged by the Declarant or the Association, under the Association Documents.

(ii) Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant’s control and administration of the Association.

(iii) Claims relating to the design or construction of any Improvements including but not limited to the Attached Townhomes, and Improvements located on the Property or Common Areas.

(b) Notwithstanding the foregoing, the following shall not constitute a Claim and shall not be subject to the provisions of this Section:

(i) Any action or suit brought by the Association against an Owner related to the collection and/or imposition of assessments as set forth in this Declaration;

(ii) Any action brought by the Association to enforce the provisions of the Declaration, including, without limitation, filing a lawsuit or other action for injunctive relief, obtaining a temporary restraining order (or equivalent emergency relief) and/or taking such other action as may be necessary to enforce the provisions of this Declaration;

(iii) Any suit between Owners that does not include Declarant, any builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration, By-Laws, or rules and regulations;

(iv) Any suit in which any indispensable party is not a bound party;



- (v) Counterclaims brought by the Association in proceedings instituted against it; or
- (vi) Actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party.
- (c) “Claimant” means any Party having a Claim against any other Party.
- (d) “Respondent” means any Party against which a Claim has been asserted by a Claimant.

#### Section 11.02. Mandatory Procedures.

Claimant may not initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Section. As provided in Section 11.09 below, a Claim will be resolved by binding arbitration. A Claimant, whether an Owner or the Association, may not consolidate any Claims or bring a Claim on behalf of any class: provided however a Respondent may join or add additional parties to a Claim as may be allegedly responsible in whole or in any part for matters which are the subject of such Claims.

#### Section 11.03. Claim Affecting Common Areas.

In accordance with this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings: (1) in the name of or on behalf of any Owner (whether one or more); or (2) pertaining to a Claim, as defined in Section 11.01(a), relating to the design or construction of Improvements on a Lot (whether one or more), including Attached Townhomes or Improvements located on the Property or any Common Area. In the event the Association or an Owner asserts a Claim related to the Common Areas, as a precondition to providing the Notice defined in Section 11.05, initiating the mandatory dispute resolution procedures set forth in this Article XI, or taking any other action to prosecute a Claim related to the Common Areas, the Association or Owner, as applicable, must:

- (a) Independent Report on the Condition of the Common Areas. Obtain an independent third-party report (the “Common Area Report”) from a licensed professional engineer which: (1) identifies the Common Areas subject to the Claim including the present physical condition of the Common Areas; (2) describes any modification, maintenance, or repairs to the Common Areas performed by the Owner(s) and/or the Association; (3) provides specific and detailed recommendations regarding remediation and/or repair of the Common Areas subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Association or an Owner and paid for by the Association or Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or Owner in the Claim. As a precondition to providing the Notice described in Section 11.05, the Association or Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date or receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Common Area Report, the specific Common Areas to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally

or through an agent. Upon completion, the Common Area Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in Section 11.05, the Association or the Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Common Area Report.

(b) Claim by the Association-Owner Meeting and Approval. If the Claim is prosecuted by the Association, the Association must first obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in Section 11.05, initiate the mandatory dispute resolution procedures set forth in this Article XI, or take any other action to prosecute a Claim, which approval from Members must be obtained at a special meeting of Members called in accordance with the By-Laws. The notice of meeting required hereunder will be provided pursuant to the By-Laws but the notice must also include: (1) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (2) a copy of the Common Area Report; (3) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the Claim (the "Engagement Letter"); (4) a description of the Legal Fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not proceed with the Claim; (5) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (6) an estimate of the impact on the value of each Attached Townhome if the Claim is prosecuted and an estimate of the impact on the value of each Attached Townhome after resolution of the Claim; (7) an estimate of the impact on the marketability of each Attached Townhome if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Attached Townhome during and after resolution of the Claim; (8) the manner in which the Association proposes to fund the cost of prosecuting the Claim; and (9) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party.

The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association or Owner, as applicable, in the Claim. In the event Members approve providing the Notice described in Section 11.05, or taking any other action to prosecute a Claim, the Members holding a majority of the votes in the Association, at a special meeting called in accordance with the By-Laws, may elect to discontinue prosecution or pursuit of the Claim.

#### Section 11.04. Claim By Owners – Improvements On Lots.

Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to an Owner by the Declarant relating to the design or construction of any Improvements located on a Lot, then this Article XI will only apply to the extent that this Article XI is more restrictive than such Owner's warranty, as determined in the sole discretion of the Declarant providing such warranty (if any). If a warranty has not been provided to an Owner relating to the design or construction of any Improvements located on a Lot, then this Article XI will apply. If an Owner brings a Claim, as defined in Section 11.01(a), relating to the design or construction of any

Improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in Section 11.05, initiating the mandatory dispute resolution procedures set forth in this Article XI, or taking any other action to prosecute a Claim, the Owner must obtain an independent third-party report (the "Owner Improvement Report") from a licensed professional engineer which: (1) identifies the Improvements subject to the Claim including the present physical condition of the Improvements; (2) describes any modification, maintenance, or repairs to the Improvements performed by the Owner(s) and/or the Association; and (3) provides specific and detailed recommendations regarding remediation and/or repair of the Improvements subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Owner and paid for by the Owner, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Owner in the Claim. As a precondition to providing the Notice described in Section 11.05, the Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Owner Improvement Report, the specific Improvements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Owner Improvement Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in this Article, the Owner shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Owner Improvement Report.

#### Section 11.05. Notice.

Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Association Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section. The one hundred and twenty (120) day period for mediation set forth in Section 11.07 below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 11.07 is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) a true and correct copy of the Common Area Report; (b) a copy of the Engagement Letter; (c) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Common Area which forms the basis of the Claim; (d) a true and correct copy of the special meeting notice provided to Members in accordance with Section 11.03(b) above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Area, the Notice will also include a true and correct copy of the Common Area Report. If the Claimant is not the Association and pertains to Improvements on a Lot, the Notice will also include a true and correct copy of the Owner Improvement Report.

#### Section 11.06. Negotiation.

Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty days after Respondent's Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Subdivision that is subject to the Claim for purposes of inspection. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Subdivision to take and complete corrective action.

#### Section 11.07. Mediation.

If the Parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the Parties), Claimant will have thirty additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the Parties mutually agree. The mediator must have at least five years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the additional thirty-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

#### Section 11.08. Termination of Mediation.

If the Parties do not settle the Claim within 30 days after submission to mediation or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article XI.

#### Section 11.09. Binding Arbitration-Claims.

All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 11.09.

(a) Governing Rules. If a Claim has not been resolved after mediation as required by Section 11.07, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 11.09, and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Dorchester County, South Carolina. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the

Supplementary Procedures for Consumer-Related Disputes. If such rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this Section, this Section will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal except as provided in Section 11.09(d), but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

- (i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;
  - (ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and
  - (iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.
- (b) Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 11.09 will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (1) exercising self-help remedies (including set-off rights); or (2) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.
- (c) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 11.09.
- (d) Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this Section 11.09 and subject to Section 11.10 below (Legal Fees and costs may not be awarded by the arbitrator). In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, (1) conclusions of law that are erroneous; (2) an error of federal or state law; or (3) cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

(e) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Dorchester County, South Carolina. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the South Carolina Rules of Civil Procedure and applicable law or regulation. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

#### Section 11.10. Allocation of Costs.

Notwithstanding any provision in this Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation and Binding Arbitration-Claims sections above, including its Legal Fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

#### Section 11.11. General Provisions.

A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not Party to Claimant's Claim.

#### Section 11.12. Period of Limitation.

(a) For Actions by an Owner. The exclusive period of limitation for any of the Parties to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of an Attached Townhome, shall be the earliest of: (1) for Claims alleging construction defect or defective design, two years and one day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; (2) for Claims other than those alleging construction defect or defective design, four years and one day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; or (3) for all Claims, the applicable statute of limitations under South Carolina law. In no event shall this Section be interpreted to extend any period of limitations under South Carolina law.

(b) For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (1) for Claims alleging construction defect or defective design, two years and one day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; (2) for Claims other than those alleging construction defect or defective design of the Common Areas, four years and one day from the date that the Association discovered or reasonably should have discovered evidence of the Claim; or (3) for all Claims, the applicable statute of limitations under South Carolina law. In

no event shall this Section be interpreted to extend any period of limitations under South Carolina law.

Section 11.13. Litigation Approval & Settlement.

The Association must levy a Special Assessment to fund the estimated costs of arbitration, including estimated Legal Fees, conducted pursuant to this Article XI or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

Section 11.14. Limitation on Consolidation or Joinder.

No mediation, arbitration, or other action arising out of or relating to this Declaration or any other Association Documents shall include, by consolidation or joinder or in any other manner, the Declarant, the Association, any managing agent engaged by the Declarant or the Association as a "Respondent" in such Claim, except by written consent containing specific reference to this Declaration signed by the Declarant, the Association, any managing agent engaged by the Declarant or the Association named as Respondent, as applicable, the Claimant, and any other person or entity sought to be joined. Consent to mediation, arbitration or other proceeding involving an additional person or entity shall not constitute consent to mediation, arbitration or other proceeding to resolve a Claim not described therein or with a person or entity not named or described therein. Notwithstanding the foregoing, the Declarant if named as a "Respondent" in a Claim, may, at its option and in its sole and absolute discretion, elect to join or consolidate mediation or arbitration with a Claimant and other Claimant(s) or any other party having an interest in the proceedings. Each Owner by taking title to any Lot hereby consents to such joinder or consolidation, which may be ordered at the sole discretion or election of the Declarant.

Section 11.15. Right of Action By Association.

Notwithstanding anything contained in the Association Documents, the Association shall not have the power to institute, defend, intervene in, settle or compromise litigation, arbitration, or other proceedings: (1) in the name of or on behalf of any Owner (whether one or more); or (2) pertaining to a Claim, as defined herein, relating to the design or construction of Improvements on a Lot and/or Common Area (whether one or more), including any Attached Townhome, and neither the Association nor any Owner may consolidate any Claims or bring a Claim on behalf of any class (provided, however, the foregoing shall not prohibit a Respondent (as defined above) from joining or adding additional parties to a Claim as may be allegedly responsible in whole or in any part for matters which are the subject of such Claims). Notwithstanding anything contained in the Association Documents, this Section 11.15 may not be amended or modified without the written and acknowledged consent of the Declarant, and Members entitled to cast at least one hundred percent of the total number of votes of the Association, which must be part of the recorded amendment instrument.

## ARTICLE XII

### SPECIAL PROVISIONS APPLICABLE TO VOLUNTARY CLEANUP OF SOILS AND THE SHORELINE PROPERTY

#### Section 12.1. Background.

A portion of the Property was the site of former phosphate mine and mill operations which began in approximately 1880 and continued until approximately 1920. The site has been vacant and unused since the phosphate operations ceased in the 1920s. A predecessor in title to the Property, Gary Lee, LLC, and the South Carolina Department of Health and Environmental Control (“DHEC”), entered into a Voluntary Cleanup Contract (“VCC”) as part of the Property’s pre-development. The VCC provided for the removal of contaminated soils from the Property, which activity has been completed. The terms and conditions of the VCC apply to and inure to the benefit of successors and assigns of Gary Lee, LLC, including the Declarant and the Subdivision, and upon any successor agency of the State of South Carolina which may have responsibility for and jurisdiction over the subject matter. A copy of the VCC is on file in the office of the Association and may be inspected during regular business hours.

#### Section 12.2. Restrictions on Activities Disturbing the Land.

The Property has various underground installations of infrastructure serving the Lots, including irrigation, which are located near the surface. No person upon the Property in any capacity subject to the provisions of this Declaration, whether as Owner, resident, guest, invitee, employee, agent, servant or contractor, shall disturb any portion of the land comprising the Common Areas of the Property, and no digging, trenching, planting or other disturbance of the soil shall be undertaken, without the prior review and approval of same by the Association or its designated property manager.

#### Section 12.3. Restriction on Access to Shoreline Property.

Because the Shoreline Property was not included in that portion of the Property subject to the VCC, no person subject to the provisions of this Declaration, whether as Owner, resident, guest, invitee, employee, agent, servant or contractor, shall access the Shoreline Property except on any pedestrian path or Association dock constructed by the Declarant, or conduct any activity thereon or undertake any the installation of any Improvements thereto without the express, prior written approval of the Association and DHEC, nor shall the provisions of Sections 12.1, 12.2 and this 12.3 be amended without the prior written consent of DHEC.

#### Section 12.4. Buffer Area Restrictions.

Except as necessary or desirable for the hereinafter listed limited activities within the Buffer Area, and the work described in the VCC, no portion of the Buffer Area shall be disturbed in any material way, including, but not limited to, construction, removal of topsoil, or trees in order to retain its natural quality as viewed from Middleton Place Natural Historic Landmark.



- (a) A fence of not less than four feet (4') in height shall be constructed and maintained within a portion of the Buffer Area in accordance with the VCC. Such fence will be designed to allow natural vegetation to grow upon it.
- (b) A pedestrian access corridor (walkway) may be created within the Buffer Area for the purpose of providing access to the water's edge and to allow residents and their guests to enjoy the natural beauty of the Buffer Area.
- (c) A dock for use of Owners and their guests may be constructed and maintained adjacent to the Buffer Area, together with an appropriate access path and/or boardwalk through the Buffer Area.

#### Section 12.5. Other Restrictions.

The following restrictions shall apply to Improvements constructed upon the Property:

- (a) Height of Certain Buildings and Other Structures. Height of all buildings and other structures shall be in conformity with Architectural Construction Documents prepared by Schmitt Walker Associates, of the surrounding Property, Summer's Bend on the Ashley Horizontal Property Regime.
- (b) Exterior Paint Colors of Buildings and other Structures. Exterior paint colors of Buildings and other structures upon the Property adjacent to the Buffer Area shall be limited to natural and darker shades compatible with the surrounding natural environment. The initial colors for the exterior of the buildings adjacent to the Buffer Area are manufactured by Sherwin-Williams and are as follows:

Color Field: (this is the main visual color)

Trim Color: (this is the Fascia and exterior accent color)

Color Field: Steady Brown sw6110 = PT-1 on the Plans and Specifications

Trim Color: Latte sw6108 = PT-7 on Plans and Specifications

Color Field: High Tea sw6159 = PT-2 on Plans and Specifications

Trim Color: Universal Khaki sw6150 = PT-8 on Plans and Specifications

Color Field: Garden Gate sw6157 = PT-3 on Plans and Specifications

Trim Color: Universal Khaki sw6150 = PT-8 on Plans and Specifications

Color Field: Artifact sw6138 = PT-4 on Plans and Specifications

Trim Color: Universal Khaki sw6150 = PT-8 on Plans and Specifications

Color Field: Jasper sw6216 = PT-5 on Plans and Specifications

Trim Color: Polished Mahogany sw2838 = PT-6 on Plans and Specifications

Color Field: Jasper sw6216 = PT-5 on Plans and Specifications

Trim Color: Garden Gate sw6157 = PT-3 on Plans and Specifications

Color Field: Polished Mahogany sw2838 = PT-6 on Plans and Specifications

Trim Color: Garden Gate sw6157 = PT-3 on Plans and Specifications

Future exterior colors shall replicate these colors or be similar in appearance.

(c) Outdoor Lighting. No spotlights, floodlights or similar high intensity lighting shall be placed or utilized upon the Property within or adjacent to the Buffer Area. This restriction shall not preclude the use of “down lighting”, minimizing light to be reflected towards the Ashley River. Other types of low intensity lighting, including normal and customary Christmas or other holiday decorations, which do not unreasonably disturb other property owners and conform to architectural standards adopted therefore, shall be allowed.

Section 12.6. The Middleton Place Foundation as Third-Party Beneficiary.

Middleton Place Foundation is and shall remain a third-party beneficiary of the within Buffer Area restrictions and all terms and conditions set forth in Sections 12.4 and 12.5 above, this Section 12.6, and Sections 12.7, and 12.8 following. The Declarant grants to Middleton Place Foundation a discretionary right to enforce the Buffer Area restrictions in a judicial action against any person(s) or other entity(ies) violating or attempting to violate the same; provided, however, that no such violation shall result in a forfeiture or reversion of title. Upon reasonable advance notice to Declarant or Association, a representative of Middleton Place Foundation shall have a right to access to inspect the Buffer Area in order to determine if the Buffer Area restrictions are being met. All issues involving maintenance of the Buffer Area and compliance with the restrictions cited herein shall be the sole responsibility of the Association.

Section 12.7. Reserved Rights.

It is expressly understood and agreed that the within Buffer Area restrictions and the rights granted Middleton Place Foundation herein do not grant or convey to members of the general public any rights of ownership, entry or use of any of the Property, and are created solely for the protection of the Buffer Area, and the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the Property for all purposes not inconsistent with the Buffer Area restrictions are reserved for the benefit of the Association.

Section 12.8. Amendment of Buffer Area Restrictions.

The provisions of Sections 12.3, 12.4, 12.5, 12.7 and this Section 12.8 shall not be amended without the prior written consent of Middleton Place Foundation, its successors and assigns.

Signature on Following Page

IN WITNESS WHEREOF, the undersigned Declarant herein has caused this instrument to be executed this 19<sup>th</sup> day of January, 2023.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

[Signature]  
Witness #1  
Witness Name: Joshua Reeves

ASHTON CHARLESTON RESIDENTIAL  
L.L.C., a South Carolina limited liability  
company

By: [Signature] (SEAL)  
Name: JOSEPH HAMPL  
Its: VP OF FINANCE

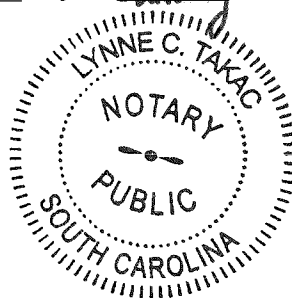
[Signature]  
Witness #2  
Witness Name: Lynne C. Takac

STATE OF South Carolina )  
COUNTY OF Charleston )

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me by Ashton Charleston Residential L.L.C., by Joseph Hampl its VP of Finance, this 19<sup>th</sup> day of January 2023.

[Signature] (SEAL)  
Notary Public for South Carolina  
My commission expires: 1/29/29  
Notary Name: Lynne C. Takac



**Exhibit A**Property

All those pieces, parcels or tracts of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South Carolina, shown and designated as “PARCEL D-4”, “PARCEL D-5”, “PARCEL D-7” and “PARCEL D-9” on a plat entitled “A PLAT OF THE SUBDIVISION OF SUMMER’S BEND TRACT D (23.53 AC.) CREATING 9 PARCELS & RESIDUAL PARCEL D” prepared by Thomas & Hutton Engineering Co. dated August 30, 2008, and recorded September 30, 2008, in Plat Book L, Page 113 in the R.O.D. Office, reference to which is craved for a more complete description.

TMS Numbers:       181-00-00-116 (Parcel D-4)  
                          181-00-00-117 (Parcel D-5)  
                          181-00-00-119 (Parcel D-7)  
                          181-00-00-121 (Parcel D-9)

**Exhibit B**Initial Common Area Description

All those certain pieces, parcels or lots of land lying, situate and being in the in the City of North Charleston, County of Dorchester, shown and designated as HOA Areas # 1-10 on a plat entitled “FINAL SUBDIVISION PLAT OF SUMMERS BEND TOWNHOMES TMS#181-00-00-116 (2.63 ac.) TO CREATE HOA# 2-4 (0.54 acres) & LOTS 29-47, 50-64 (2.09 ac.) TMS#181-00-00-117 (1.52 ac.) TO CREATE HOA# 7-10 (0.43 acres) & LOTS 1-14 (1.09 ac.) TMS#181-00-00-119 (2.04 ac.) TO CREATE HOA# 5 & 6 (0.64 acres) & LOTS 15-28 (1.40 ac.) TMS #181-00-00-121 (1.10 ac.) TO CREATE HOA# 1 (0.93 acres) & LOTS 48 & 49 (0.17 ac.),” prepared by Thomas & Hutton dated September 2, 2022 and recorded in Plat Book O, at Page 11 in the R.O.D. Office. For a more complete and particular description, reference is hereby made to the aforesaid plat.

**Exhibit C**

Articles of Incorporation

See attached.

Filing ID: 221116-1338244

Filing Date: 11/16/2022

**STATE OF SOUTH CAROLINA  
SECRETARY OF STATE**

**ARTICLES OF INCORPORATION  
Nonprofit Corporation – Domestic  
Filing Fee \$25.00**

Pursuant to S.C. Code of Laws Section 33-31-202 of the 1976 S.C. Code of Laws, as amended, the undersigned corporation submits the following information

1. The name of the nonprofit corporation is

Summer's Bend Townhomes Owners Association, Inc.

2. The initial registered office (registered agent's address in SC) of the nonprofit corporation is  
877 Island Park Drive, Suite 200

(Street Address)

Daniel Island, South Carolina 29492

(City, State, Zip Code)

The name of the registered agent of the nonprofit corporation at that office is

Richard Loudin

(Name)

I hereby consent to the appointment as registered agent of the corporation.

(Agent's Signature)

3. Check "a", "b", or "c", whichever is applicable. Check only one box.

- a. ☐ The nonprofit corporation is a public benefit corporation.  
b. ☐ The nonprofit corporation is a religious corporation.  
c. ☒ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b" whichever is applicable

- a. ☒ This corporation will have members.  
b. ☐ This corporation will not have members.

5. The principal office of the nonprofit corporation is  
877 Island Park Drive, Suite 200

(Street Address)

Daniel Island, South Carolina 29492

(City, State, Zip Code)

Summer's Bend Townhomes Owners Association, Inc.

Name of Corporation

6. If this nonprofit corporation is either a **public benefit** or **religious corporation** complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation. **If you are going to apply for 501(c)(3) status, you must complete section "a".**

a. ☐

Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

☐

If you choose to name a specific 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

OR

b. ☐

If the dissolved corporation is not described in Section 501(c)(3) of the Internal Code, upon dissolution of the corporation, the assets shall be distributed to one or more public benefit or religious corporation or to one or more of the entities described in (a) above.

☐

If you chose to name a specific public benefit, religious corporation or 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

7. If the corporation is mutual benefit corporation complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. ☒

Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. ☐

Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows [See S.C. Code of Laws Section 33-31-202(c)].



Summer's Bend Townhomes Owners Association, Inc.
--

Name of Corporation

9. The name and address of each incorporator is as follows (**only one is required, but you may have more than one**).

Katherine Rebholz

(Name)

652 Coleman Blvd., Suite 200

(Business Address)

Mount Pleasant, South Carolina 29464

(City, State, Zip Code)

(Name)

(Business Address)

(City, State, Zip Code)

(Name)

(Business Address)

(City, State, Zip Code)

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles.

(Name – only if names in articles)

(Signature of Director)

(Name – only if names in articles)

(Signature of Director)

(Name – only if names in articles)

(Signature of Director)

Summer's Bend Townhomes Owners Association, Inc.

Name of Corporation

11. Each incorporator listed in #9 must sign the articles

Katherine Rebholz

\_\_\_\_\_  
(Signature of Incorporator)

\_\_\_\_\_  
(Signature of Incorporator)

\_\_\_\_\_  
(Signature of Incorporator)

12. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is:

\_\_\_\_\_

**After Recording, Please Return To:**  
**Buist, Byars & Taylor, LLC**  
 652 Coleman Blvd., Suite 200  
 Mt. Pleasant, SC 29464

## **Exhibit D**

### By-Laws

## **ARTICLE I GENERAL**

### Section 1.01. Applicability.

These By-Laws provide for the self-government of Summer's Bend Townhomes Owners Association, Inc., in accordance with the Articles of Incorporation filed with the Secretary of State of South Carolina and the Declaration of Covenants, Conditions and Restrictions for Summer's Bend Townhomes, recorded in the R.O.D. Office for Dorchester County, South Carolina (the "Declaration").

### Section 1.02. Name.

The name of the association is Summer's Bend Townhomes Owners Association, Inc. ("Association").

### Section 1.03. Definitions.

The terms used herein shall have their generally accepted meanings or such meaning as are specified in Article I of the Declaration.

### Section 1.04. Membership.

Each Member shall be entitled to the benefit of, and be subject to, the provisions of Association Documents. The qualification of Members of the Association, the manner of their admission to Membership, the manner of the termination of such Membership and the manner of voting by Members shall be established and terminated as set forth below and in the Articles:

- (a) Membership in the Association for Lot Owners other than Declarant shall be established by the acquisition of Lot Owners of fee title to a Lot as evidenced by the recording of an instrument of conveyance in the R.O.D. Office. Otherwise, voting rights attributable to a Lot Owners interest shall vest upon the recording of this Declaration. Where title to a Lot is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.
- (b) The Association shall have one (1) class of voting membership, which shall include all Members, and each Member shall be entitled to one (1) vote for each Lot owned.
- (c) No Member may assign, hypothecate or transfer in any manner his Membership in the Association except as an appurtenance to his Lot.

(d) Any Member who conveys or loses title to a Lot by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from Lot Owner's ownership of such Lot, but shall remain personally liable to the Association for any unpaid Assessments levied upon the subject Lot which accrue during the period of such Person's Lot Owners ownership of the Lot.

(e) There shall be only one (1) vote for each Lot. If there is more than one Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-Owner as to a dispute between the co-Owners regarding their vote prior to the casting of that vote, the vote of any co-Owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

#### Section 1.05. Majority.

As used in these By-Laws, the term "majority" shall mean those votes, totaling at least thirty-three of sixty-four possible votes. Except as otherwise specifically provided in the Declaration or these By-Laws, all decisions shall be by majority vote.

#### Section 1.06. Establishment and Purpose of The Association.

Summer's Bend Townhomes is a private, exclusive community carefully and comprehensively planned by Declarant so as to preserve, protect, complement, and enhance the natural ambiance of the Property.

Declarant has established the Association for the purpose of exercising powers of owning, maintaining, repairing, reconstructing, improving, and administering the Common Areas, providing common services, administering and enforcing the within covenants and the conditions and restrictions set forth herein, levying, collecting, and disbursing the Assessments and charges herein imposed, holding, owning, and utilizing the easements it may enjoy, and for other purposes.

It is Declarant's intention to convey a perpetual easement to the Association over the Common Areas and any and all Improvements and personal property associated therewith, which are to be held and administered in accordance with this Declaration. Declarant further reserves the right to convey or transfer to the Association any and all rights and obligations of Declarant set forth herein. The legal costs and expenses of such conveyances shall be borne by Declarant.

## **ARTICLE II MEETING OF MEMBERS**

#### Section 2.01. Annual Meetings.

The regular annual meeting of the Members shall be held during the month of December of each year with the date, hour, and place to be set by the Board of Directors.

Section 2.02. Special Meetings.

Special meetings of the Members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more Members of the Board of Directors, or upon written petition of twenty-five percent (25%) of the Lot Owners. Any such written petition by the Members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of Members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition, and the Secretary shall send notice of the meeting in accordance with these By-Laws.

Section 2.03. Notice of Meetings.

It shall be the duty of the Secretary to mail or deliver to each Owner of record a notice of each annual or special meeting of the Association at least fifteen (15) days prior to each meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it will be held. The notice of an annual meeting shall state the time and place of the meeting. Secretary shall provide notice pursuant to Section 2.11 herein. Notice of meetings provided in the manner pursuant to Section 2.11 shall be considered proper service of notice.

Section 2.04. Waiver of Notice.

Waiver of notice of meeting of the Lot Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Lot Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of such notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 2.05. Quorum.

The quorum at meetings of the Lot Owners shall consist of persons entitled to cast or proxies entitled to cast ten percent (10%) of the votes except as otherwise provided in the Articles of Incorporation, the Declaration or these By-laws. The Members present at a duly called or held meeting at which a quorum is present may continue to do business at the meeting or any adjournment thereof notwithstanding the withdrawal of enough Members to leave less than a quorum. The joinder of a Member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum. Any absent Member who does not execute and return the proxy form sent to him or her with the notice of meeting shall be deemed present for the purpose of determining the presence of a quorum.

#### Section 2.06. Adjournment.

Any meeting of the Lot Owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Lot Owners holding the majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

#### Section 2.07. Proxy.

Any Member entitled to vote may do so by written proxy duly executed by the Member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or telefax transmission to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy. In the event a Member neither attends the meeting nor returns an executed proxy, then such Member shall be deemed to be present for purposes of determining a quorum and shall be deemed to have given his proxy to and for the majority present and voting.

#### Section 2.08. Action Without a Meeting.

Any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting by the Members if the Association delivers a written or electronic ballot to every Member entitled to vote on the matter. The written or electronic ballot shall: (1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action. All solicitations for votes by written or electronic ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of directors; and (iii) specify the time by which a ballot must be received by the corporation in order to be counted. Approval by written or electronic ballot pursuant to this Section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Except as otherwise expressly provided in the Articles of Incorporation, the Declaration, Covenants, or these By-Laws, a written or electronic ballot may not be revoked. To the extent there is any conflict between this section and the South Carolina Nonprofit Corporations Act, as amended (the "Act"), the Act controls.

#### Section 2.09. Order of Business.

At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these By-Laws or the Articles.

### Section 2.10. Record Date.

The Association may establish such record date for Membership as may be authorized by the Act or applicable South Carolina law.

### Section 2.11. Notice, Advanced Technology, Meetings, and In-Person Actions.

(a) Notice required to be given or sent under any Association Documents shall be in writing and shall be deemed to have been properly delivered (i) three business days after being deposited in the United States mail, First Class postage prepaid; (ii) upon delivery when delivered by personal delivery or a nationally recognized and reputable courier service; and/or (iii) unless prohibited by law, upon delivery when sent by those Acceptable Technological Means (as defined below) by which delivery is direct to such party and is immediate such as by, but not limited to, email, texts, instant messaging, and the like when sent to the applicable address of the party who appears as (or for) the Member in the records at the time of sending; provided, however, with regard to the Board of Directors, if the Association Documents permit notice for a meeting by verbal or audio means, such means shall be in addition, not in limitation, to this Section. Notice to one of two or more Members or Owners shall constitute notice to all. Each party is obligated to promptly notify the Secretary in writing of the correct address and of any change of address. If a party has not notified the Secretary in writing of such address or change of address, the notice shall be sufficient if delivered to the Lot or to the address identified by an online search of the Dorchester County Tax Assessor's Office for the 'current owner' of the Lot. Any Member may, by written waiver, waive notice and such waiver, when filed in the records of the Association whether before or after the meeting, shall be deemed equivalent to the giving of such notice to such Member.

(b) Due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted by law now or in the future: (i) any notice or communication required to be sent or received; (ii) any signature, vote, consent or approval required to be obtained; or (iii) any payment required to be made under the Association Documents may be accomplished by the use of "acceptable technological means" (as defined below). This section shall govern the use of such "acceptable technological means" in implementing the provisions of the Association Documents dealing with notices, payments, signatures, votes, consents or approvals.

(i) Acceptable Technological Means. To the extent permitted by law, the Association and its Members/Owners may send and receive notices, consent, approve, vote, sign, transfer funds or make/receive payments, communicate, conduct business, and perform any obligation or exercise any right (collectively hereinafter, "Conduct Business") by the use of "Acceptable Technological Means". Acceptable Technological Means includes, without limitation, electronic or digital delivery, communications, transmissions, means or the like over the internet, or other community, platform, network or the like, whether by direct connection, intranet, telecopier, email, text, instant message or other generally available technology, platform or means which exists, or may develop, that, by determination of the Board, in its sole discretion, is deemed to provide reasonable security, reliability, identification and verifiability.

(ii) Members/Owners Automatically Opt-In and Opt-Out.

(1) Members/Owners shall be automatically deemed to consent to Conduct Business by use of Acceptable Technological Means.

(2) A Member/Owner who does not have reasonable access to Acceptable Technological Means may opt-out of Conducting Business by use of Acceptable Technological Means upon written notice to the Association of such opting-out.

(iii) Signature Requirements. A signature by or through Acceptable Technological Means meeting the requirements of applicable law shall satisfy any requirement for a signature under the Association Documents or applicable law provided that a record is created, or can be created, as evidence thereof, and which can be maintained as long as such record would be required to be available in non-electronic, non-digital or other non-technological form.

(iv) Electronic Funds Transfer. Members/Owners may transfer funds or make/receive payment of sums to and from the Association by Acceptable Technological Means provided a record is created, or can be created, as evidence thereof, and which can be maintained as long as such record would be required to be available in non-electronic, non-digital or other non-technological form.

(v) Voting Rights. Voting, consent to and approval of any matter under the Association Documents or applicable law may be accomplished by Acceptable Technological Means provided (a) that a record is created, or can be created, as evidence thereof, and which can be maintained as long as such record would be required to be maintained in non-electronic, non-digital or other non-technological form; or (b) applicable law permits the same.

(vi) Non-Technology Alternatives. If the Association, as determined from time to time by the Board in its sole discretion, or any Members/Owners have opted-out as provided above, the Association shall make reasonable accommodation, if possible, for such person or entity to Conduct Business without use of such Acceptable Technological Means until such Acceptable Technological Means have become generally (if not universally) accepted in similar communities in the area.

(7) This section shall not apply to any notice related to any lien, or any enforcement, collection or foreclosure action or like proceedings by the Association.

(c) Further due to such ongoing development of new technologies and corresponding changes in business practices, to the extent not prohibited by law now or in the future, in the event of emergency and/or extraordinary circumstances which render in-person meetings of the Board, membership, committees and/or the like impossible, substantially imprudent or substantially impractical, the Board may determine and direct, in its sole discretion, to hold any such (i) meeting in person, or by remote, virtual, electronic, digital and/or like communication or other Acceptable Technological Means (collectively "Other Means"), or by a combination thereof, provided that the attendance or presence of a member can be determined at such meeting by the person presiding at the meeting, and/or (ii) voting in person, or by Other Means, or by a combination thereof, provided



that as to any voting, a record is created, or can be created, as evidence thereof, and which can be maintained as long as such record would be required to be maintained in non-electronic, non-digital or other non-technological form and is not expressly prohibited by law. Any meeting or vote which can be reasonably delayed, in the sole discretion of the Board, until such time as the emergency and/or extraordinary circumstances have resolved, or sufficiently resolved, should be delayed. The foregoing notwithstanding and if not prohibited by law now or in the future, with regard to meetings of the Board, the Board may at any time determine (iii) to hold any meeting of the Board in person or by Other Means, or by a combination thereof, provided that the attendance or presence of a director can be determined by the person presiding, and/or (iv) to vote in person, or by Other Means, or by a combination thereof, provided that a record is created, or can be created, as evidence thereof, and which can be maintained as long as such record would be required to be maintained in non-electronic, non-digital or other non-technological form.

### **ARTICLE III BOARD OF DIRECTORS**

#### Section 3.01. Composition, Election, and Term of Office.

The number of Directors of the Association shall be three (3) or five (5). Prior to the Turnover Date, the Board will consist of three (3) Directors appointed by the Declarant and following the Turnover Date, the Board will consist of five (5) Directors. At the first election of Directors following the Turnover Date, the three (3) Directors receiving the highest number of votes shall each serve a two (2) year term, and the remaining two (2) Directors will serve a one (1) year term. For every election thereafter, Directors shall be elected to serve two (2) year terms.

Notice to Members shall be given that a meeting shall be held for the election of Directors. The notice shall contain the names of those persons nominated by the Board but shall note that other nominations may be made by Members at the meeting.

After giving the Members (or proxy holders) attending such meeting the opportunity nominate other Persons, the Directors shall be elected by written ballot. Those nominated persons receiving the highest number of votes shall be the Directors.

#### Section 3.02. Veto.

Declarant shall have the veto power over all actions of the Board of Directors of the Association as is more fully provided below. This power shall expire when waived in writing by the Declarant, or fifteen (15) years from the date of recording of the Declaration, whichever first occurs. This veto power shall be exercised only by Declarant, its successors and assigns. The veto shall be as follows:

No action authorized by the Board shall become effective, nor shall any action, policy or program be implemented until and unless:

(a) Declarant shall have been given written notice of the meeting at which an action is to be taken by certified mail, return receipt requested or by personal delivery, at the address it has

registered with the Secretary of the Association, as it may change from time to time, which notice complies with the terms of these By-Laws as to regular and special meetings of the Directors, and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Declarant shall be given the opportunity at any such meeting, if Declarant so desires, to join in, or to have its representatives or agents join in, discussion from the floor of any prospective action, policy or program to be implemented by the Board. Declarant and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the Association and/or the Board. At such meeting, Declarant shall have, and is hereby granted, a veto power over any such action, policy or program authorized by the Board of Directors and to be taken by said Board, the Association or any individual Member of the Association if Board approval is necessary for said Member's action. Said veto may be exercised by Declarant, its representatives, or agents at the meeting held pursuant to the terms and provisions hereof or in writing within ten (10) days of written notice of the proposed action. Any veto power shall not extend to the requiring of any action or counteraction on behalf of the Board or Association. If Declarant so desires, Declarant may construe this veto power as Declarant, being a member of the Board of Directors, existing in a class of directors independent from the other Board members with a term equal to the term of the veto power and with the powers as described herein.

#### Section 3.03. Removal of Directors of the Board of Directors.

Any one or more of the Directors of the Board of Directors may be removed with or without cause by a majority of the Members of the Association and a successor may then and there be elected to fill the vacancy thus created. Moreover, any Director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than sixty (60) days past due in payment of any assessment may be removed by the vote of a majority of the other Directors. Any Director whose removal has been proposed shall be given at least ten (10) days' notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

#### Section 3.04. Vacancies.

Vacancies in the Board of Directors caused by any reason, except the removal of a Director by vote of the membership, shall be filled by a vote of the majority of the remaining Directors, even though less than a quorum is present, at any meeting of the Board of Directors. The successor so selected shall hold office for the remainder of the term of the Director being replaced.

#### Section 3.05. Compensation.

Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a majority vote of the Members. Directors may be reimbursed for the expenses incurred in carrying out their duties as Directors upon approval of such expenses by the Board of Directors.

Section 3.06. Director Conflicts of Interest.

Nothing herein shall prohibit a Director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as a director, provided that the Director's interest is disclosed to the Board and the contract is approved by a majority of the Directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the Director with whom the contract is made. The interested Director shall not count for purposes of establishing a quorum of the Board. The interested Director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract, unless requested by any other Director to leave the room during the discussion.

Section 3.07. Nomination of Directors.

Except with respect to Directors selected by the Declarant, nomination for election to the Board shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a Director of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members to serve from the time of appointment until the close of the annual meeting, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor, also. All candidates shall have a reasonable opportunity, if they so desire, to communicate their qualifications to the Members and to solicit votes.

Section 3.8. Regular Meetings.

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least twice during each fiscal year. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership.

Section 3.9. Special Meetings.

Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each Director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Vice President, Secretary, or Treasurer in like manner on like notice on the written request of at least two (2) Directors.

Section 3.10. Waiver of Notice.

Any Director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall also constitute a waiver of the notice by

him or her of the time and place of such meeting. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 3.11. Conduct of Meetings.

The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book recorded therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. A majority of Directors shall constitute a quorum for the transaction of business. One or more Directors who participate in a meeting by Other Means (as defined herein) shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 3.12. Open Meetings.

All meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 3.13. Action Without a Meeting.

Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the Directors consent in writing to such action. Such written consent must describe the action taken and be signed by no fewer than all of the Directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

Section 3.14. Powers and Duties.

The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Property and may do all such acts and things as are not by the Declaration, the Articles of Incorporation, or these By-Laws directed to be done and exercised exclusively by the Members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following (subject, however, to the limitation provided for in the Declaration), in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the Annual Assessment;
- (c) providing for the operation, care, upkeep, and maintenance of all Common Areas;

- (d) designate, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Areas and the Area of Common Responsibility 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) collecting the Assessment, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations and imposing sanctions for violation thereof, including, without limitation, monetary fines;
- (g) opening of bank or other financial 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 other provisions of the Declaration and these By-Laws, after damage or destruction by fire or other casualty;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Lot Owners concerning the Association;
- (j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Lot Owners;
- (l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expense incurred; and
- (m) contracting with any person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations.

Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

### Section 3.15. Limitations on Powers and Duties of the Association.

Notwithstanding any other provision contained herein to the contrary, neither the Board of Directors acting on behalf of the Association, nor the Association as an entity, shall have any right,

privilege, power nor standing to proceed on any cause of action, claim or demand arising from or related to any property, real, personal or intangible, unless such property is owned and titled to the Association and the Association shall have no right, title, power or privilege to act on behalf of any other person, including Lot Owners, derivatively or otherwise, in respect to any other property not owned and titled to the Association.

#### Section 3.16. Management Agent.

The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

#### Section 3.17. Borrowing.

The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement of the Common Area and facilities without the approval of the Members of the Association; the Board shall also be authorized to borrow money for other purposes; provided, however, the Board shall obtain membership approval in the same manner as provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Property.

#### Section 3.18. Liability and Indemnification of Officers and Directors.

The Association shall indemnify every officer and director, and the Declarant, against any and all expenses, including, without limitation, Legal Fees, imposed upon or reasonably incurred by any officer or Director or the Declarant in connection with any action, suit, or other proceedings to which such officer or Director may be a party be reason of being or having been an officer, Director or otherwise acted in accordance with the terms hereof or on behalf of the Association hereunder. Neither the officers and Directors nor Declarant shall be liable for any mistake of judgment, negligent or otherwise, except for individual willful misfeasance, malfeasance, misconduct or bad faith. Neither the officers and Directors nor Declarant shall have any personal liability with respect to any contract or other commitment made by any of them, in good faith, on behalf of the Association (except to the extent that such officers and Directors or Declarant may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Director and Declarant free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director or Declarant, or former officer or Director may be entitled. The Association shall maintain adequate general liability and officers and Directors liability insurance to fund this obligation, if such coverage is reasonably available.

#### Section 3.19. Nominating Committee.

Pursuant to Section 3.09 of this Article, there shall be a Nominating Committee composed of three (3) Directors appointed in the manner and to perform the functions specified in this Article.

Section 3.20. Other Committee's.

There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

Section 3.21. Service on Committees.

Unless otherwise provided in these By-Laws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

## **ARTICLE IV OFFICERS**

Section 4.01. Designation.

The principal offices of the Association shall be the President, the Vice President, the Secretary, and the Treasurer. The President and Vice President shall be elected by and from the Board of Directors. The Secretary and Treasurer shall be elected by the Board of Directors, but need not be Directors of the Board. The Board of Directors may appoint one or more Assistant Treasurers, Assistant Secretaries, and such other subordinate officers as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be Directors of the Board of Directors. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office.

Section 4.02. Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the Members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

Section 4.03. Removal of Officers.

Upon the affirmative vote of a majority of the Directors of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4.04. Vacancies.

A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 4.05. President.

The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Act, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 4.06. Vice President.

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.

Section 4.07. Secretary.

The Secretary shall keep the minutes of all meetings of the Members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under South Carolina law.

Section 4.08. Treasurer.

The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 4.09. Other Officers.

Other officers may be created by the Board, and the persons which hold such offices shall have such titles and duties as are defined by the Board.

Section 4.10. Agreements, Contracts, Deeds, Leases, Etc.

All agreements, contract, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designate by resolution of the Board of Directors.



## ARTICLE V RULE MAKING AND ENFORCEMENT

### Section 5.01. Authority and Enforcement.

The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Area; provided, copies of all such rules and regulations shall be furnished to all Lot Owners and Occupants. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any Occupant of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and the Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Lot Owner shall pay the fine upon notice of the Association, and the fine shall be an assessment and a lien against the Lot until paid. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

### Section 5.02. Fining and Suspension Procedures.

The Board shall not impose a fine, suspend the right to vote (unless an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association in which case such suspension shall be automatic), or suspend the right to use the Common Area unless and until notice of the violation is given as provided in subsection (a) below:

(a) Notice. If any provision of the Declaration or By-Laws or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall state: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed sanction, or both; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action; and (v) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of receipt of the notice. If a challenge is not made, the sanction shall be effective upon the date of the notice; provided, the Board may, in its discretion, waive any sanction if the violation is cured within ten (10) days from the date of notice. In the event of a continuing violation, each day the violation continues constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

Section 5.03. Additional Enforcement Rules.

Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any provisions of the Declaration, the By-Laws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and monetary damages or both without the necessity for compliance with the procedure set forth in this Article V). In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including Legal Fees.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including Legal Fees, shall be assessed against the violating Lot Owner and shall be collected as provided herein for the collection of assessments.

**ARTICLE VI  
MISCELLANEOUS**

Section 6.01. Notices.

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

- (a) If to an Owner, at the address which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;
- (b) If to an Occupant, at the address of the Lot occupied; or
- (c) If to the Association, the Board of Directors or the managing agent at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 6.02. Severability.

The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these By-Laws or the Declaration.

Section 6.03. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provisions thereof.

Section 6.04. Gender and Grammar.

The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 6.05. Fiscal Year.

The fiscal year of the Association may be set by resolution of the Board of Directors. In the absence of such resolution by the Board of Directors, the fiscal year shall be the calendar year.

Section 6.06. Financial Review.

A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the Lot Owners may, by a majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant.

Section 6.07. Conflicts.

The duties and powers of the Association shall be those set forth in the Act, the Declaration, these By-Laws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Act, the Declaration, these By-Laws, or the Articles of Incorporation, then the provisions of the Act, as may be applicable, the Declaration, the Articles of Incorporation and these By-Laws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefore, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 6.08. Amendment.

Except where a higher vote is required for action under a particular provision of the Declaration or By-Laws, in which case such higher vote shall be necessary to amend, these By-Laws may be amended only by the affirmative vote, and written consent of a majority of the Directors of the Board of Directors of the Association; provided, however, that no amendment to these By-Laws shall be in conflict with the Declaration, and no amendment to these By-Laws shall change, alter or affect any rights or privileges of the Declarant, without the prior written consent of the Declarant. Any amendment duly certified and recorded (containing any additional signatures required by the Declaration) shall be conclusively presumed to have been duly adopted in accordance with the Declaration and By-Laws.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

**Exhibit E**Maintenance Repair and Upkeep Obligations

<b>Maintenance, Repair or Upkeep Obligation</b>	<b>Responsible Party</b>	
	<b>Association</b>	<b>Owner</b>
<b>Roof</b>		
<ul style="list-style-type: none"> <li>• Roof replacement only when the Board determines at its sole and absolute discretion that replacement is necessary or if repair is the result of a casualty covered by the Association's insurance policy</li> </ul>	<b>X</b>	
<ul style="list-style-type: none"> <li>• Routine maintenance and repair</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• Shingles, flashing and other roof components</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• Structural components to the roof</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• Gutters &amp; downspouts</li> </ul>		<b>X</b>
<b>Exterior Surfaces</b>		
<ul style="list-style-type: none"> <li>• Painting, only when the Board determines at its sole and absolute discretion that exterior paint needs to be replaced due to the life of the painted surface</li> </ul>	<b>X</b>	
<ul style="list-style-type: none"> <li>• Touch-up painting</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• Pressure washing</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• Caulking</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• All other maintenance and repair</li> </ul>		<b>X</b>
<b>Foundations, Footings and Waterproofing (above and below grade)</b>		<b>X</b>
<b>Garage Doors</b>		
<ul style="list-style-type: none"> <li>• Painting in connection with the painting of the exterior of the Home only when the Board determines at its sole and absolute discretion that the exterior paint needs to be replaced due to the life of the painted surface</li> </ul>	<b>X</b>	
<ul style="list-style-type: none"> <li>• Touch-up painting</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• Pressure Washing</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• Equipment and Operation</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• All other maintenance and repair</li> </ul>		<b>X</b>
<b>Exterior Lighting</b>		

<ul style="list-style-type: none"> <li>• Attached to, exclusively serving or located on the Home</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• Exterior lighting that serves more than one Home</li> </ul>	<b>X</b>	
<b>Driveways, Walkways and Steps</b>		<b>X</b>
<b>Windows, Doors, Glass, Frames, Screens and Hardware</b>		<b>X</b>
<b>HVAC Equipment (regardless of whether inside or outside the boundaries of the Home)</b>		<b>X</b>
<b>Pipes, Wires and Conduits</b>		
<ul style="list-style-type: none"> <li>• If serving only 1 Home</li> </ul>		<b>X</b>
<ul style="list-style-type: none"> <li>• If serving more than 1 Home or a Home and Common Area</li> </ul>	<b>X</b>	
<b>Hose Bibbs</b>		<b>X</b>
<b>Landscape Maintenance</b>	<b>X</b>	