

FILED
 GREENVILLE, SC
DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS, AND RESTRICTIONS
 FOR 2004 AUG - 3 1 2 33
HAMMETT POND SUBDIVISION

JUDY G. JONES
REGISTER OF DEEDS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made on the date hereinafter set forth by **MARTIN & HARRISON HOMES, LLC**, having an office at 104 South Main Street, Suite 700, Greenville, South Carolina 29601 (the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of certain property in the County of Greenville, State of South Carolina, which is more particularly described on Exhibit "A" attached hereto and incorporated herein, which Declarant desires to develop into a residential community consisting of two (2) or more phases; and

WHEREAS, Declarant desires to foster the attractiveness of such property, to prevent future impairment thereof, to preserve, protect and enhance the values and amenities of the property, and to provide for the maintenance and upkeep of all common areas therein.

NOW THEREFORE, for and in consideration of the premises hereinafter described and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares that all of the Property (defined below) shall henceforth be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the title to the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1.1 "Approved Builder" shall mean and refer to builders who have been selected by Declarant to buy Lots and construct homes for sale in the Subdivision.

Section 1.2 "Association" shall mean and refer to The Hammett Pond Homeowners Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

Section 1.3 "Architectural Committee" shall mean the Architectural Committee as identified in Section 6.2.

Section 1.4 "Assessments" shall mean and refer to a Lot's and its Owner's share of the common expenses which from time to time are assessed against a Lot and its Owner by the Association in accordance with Article V of this Declaration. As used herein, Assessments

include "Annual Assessments", "Special Assessments" and "Special Individual Assessments", as such terms are defined in Section 5.1.

Section 1.5 "Board" shall mean and refer to the board of directors of the Association.

Section 1.6 "Common Area" shall mean and refer to all portions of the Property which are not designated as Lots, together with and including those portions of the Property shown and designated on the Plats as "Common Area", which shall include but are not limited to any real property or easements owned by the Association for the common use and enjoyment of the Owners. The Common Area shall be owned by the Association for the common use and benefit of the Owners, subject to the easements, terms, conditions and restrictions described in this Declaration.

Section 1.7 "Declarant" shall mean and refer to Martin & Harrison Homes, LLC, a South Carolina limited liability company, its successors and assigns; provided that no assignment shall become effective unless and until an instrument of assignment and acceptance shall be duly executed by both the current and the proposed successor Declarant and thereafter recorded in the Office of the Register of Deeds for Greenville County.

Section 1.8 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements for Hammett Pond, as the same may be amended, supplemented, renewed or extended from time to time in the manner herein provided.

Section 1.9 "Lot" shall mean and refer to any separately numbered plot of land shown upon the Plats, and which shall be subject to individual ownership by an Owner.

Section 1.10 "Member" shall mean and refer to an Owner, Approved Builder, or Declarant, as the case may be, each of whom shall have voting rights in the Association in accordance with Article III of this Declaration so long as such party owns one or more Lots.

Section 1.11 "Mortgage" shall mean and refer to a mortgage constituting a first lien on a Lot.

Section 1.12 "Mortgagee" shall mean and refer to an institutional lender holding a Mortgage that has given written notice to the Association pursuant to Section 10.2 and has requested all rights available to it under the Association's governing documents and this Declaration.

Section 1.13 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to a Lot, including Declarant so long as it owns a Lot and each Approved Builder so long as it owns a Lot, but excluding persons or entities having an interest merely as security for the performance of an obligation.

Section 1.14 "Phase" shall mean and refer to that portion of the Property that shall consist of more than one, but less than all of, the Lots, as depicted upon a Plat and as subjected to this Declaration herewith or subsequently by annexation, as hereinafter provided. Phase One,

consisting of seven (7) Lots, is depicted upon that certain Plat entitled "Hammett Pond, Phase 1", dated July 6, 2004, prepared by Freeland & Associates, Inc., and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 48-V at Page 15 (the "Phase One Plat").

Section 1.15 "Plats" shall mean and refer to (i) the Phase One Plat, (ii) any revisions, supplements or amendments thereto, and (iii) any subsequent plats of additional Phases of the Subdivision hereafter recorded by Declarant in the Office of the Register of Deeds for Greenville County.

Section 1.16 "Property" shall mean and refer to such property as is herewith or may subsequently be subjected to this Declaration, including the Lots and the Common Area, which may be subjected to this Declaration in one (1) or more Phases as hereinafter provided.

Section 1.17 "Subdivision" shall mean and refer to Hammett Pond Subdivision, as the same is or may be shown on the Plats, and consisting of the Lots and the Common Area.

ARTICLE II **PROPERTY RIGHTS**

Section 2.1 Subjection of Property to this Declaration. Declarant hereby subjects all of the property depicted upon the Phase One Plat to this Declaration and declares that the same shall constitute the Property in accordance with this Declaration. Any additional portion of the property described on Exhibit "A" attached hereto and incorporated herein that may subsequently be annexed into the Subdivision in accordance with the provisions of Article XI of this Declaration shall likewise be deemed to constitute a portion of the Property and be subject to the terms and provisions of this Declaration.

Section 2.2 General Provisions. Each Lot shall be owned in fee simple and may be conveyed, transferred and encumbered in the same manner as any other real property. Each Owner is and shall be entitled to the exclusive ownership and possession of such Owner's Lot, subject to the provisions of this Declaration. All provisions of this Declaration shall be covenants running with the land, every part thereof and every interest therein, including without limitation every Lot. Each Owner and such Owner's heirs, successors, legal representatives and assigns shall be bound by all provisions of this Declaration. The ownership of each Lot shall include, and there shall pass with the title to each Lot as appurtenances thereto, whether or not separately described, all of the rights, title and interest of an Owner of a Lot, including without limitation, the Owner's rights of membership in the Association, including the Owner's right to vote on all matters requiring a vote of the Owners pursuant to this Declaration and the Owner's interest in any funds and assets then held by the Association.

Section 2.3 Membership In The Association. Membership in the Association shall consist exclusively of Declarant (for so long as it owns any Lots), each Approved Builder (for so long as it owns any Lots), and all Owners. Any Person becoming an Owner of a Lot shall automatically become a member of the Association and be subject to the Bylaws. An Owner's membership shall terminate without formal action of the Association whenever such Owner ceases to be an Owner, but such termination shall not relieve any such former Owner from any

liability or obligations incurred under or in any way connected with the Association during such period of ownership and membership, or impair any remedies available to the Association. When more than one Owner holds title to a Lot, the Lot's vote on all matters upon which the members of the Association are entitled to vote shall be exercised as a single indivisible vote by the Owners of the Lot as they shall determine among themselves.

Section 2.4 Owners' Easements Of Enjoyment. Every Owner shall have a perpetual non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to dedicate, transfer, or grant easements upon all or any part of the Common Area to any governmental, quasi-governmental, or other public agency, authority or utility, for utility purposes for the benefit of the Property for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer, or easement shall be effective without a sixty-seven (67%) percent affirmative vote of the total Lot votes entitled to vote at a meeting of the Owners duly called by the Board for such purpose;

(b) the right of the Association to impose reasonable rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

(c) the right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money secured by a mortgage against the Common Area for the purpose of improving the Common Area and facilities thereon. No mortgage of the Common Area shall be effective without a sixty-seven (67%) percent affirmative vote of the total Lot votes entitled to vote at a meeting of the Owners duly called by the Board for such purpose and at least a fifty-one percent (51%) vote of all Mortgagees of Lots subject to Mortgages held by Mortgagees;

(d) the right of the Association to exchange portions of the Common Area with Declarant for substantially equal areas of the Property for the purpose of eliminating unintentional encroachments of improvements onto portions of the Common Area or any other purpose or reason; and

(e) the right of the Association to suspend the voting rights of an Owner as described herein.

Section 2.5 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his/her rights of use and enjoyment of the Common Area to the members of his/her immediate family and their guests, tenants or contract purchasers who reside on the Lot of such Owner.

Section 2.6 Conveyance, Lease, or Encumbrance of Common Area. No conveyances or leases of or security interests or liens of any nature shall arise or be created against all or any portion of the Common Area without an sixty-seven percent (67%) affirmative vote of the total

Lot votes entitled to vote at a meeting of the Owners duly called by the Board for such purpose, and at least a fifty-one percent (51%) vote of all Mortgagees of Lots subject to Mortgages held by Mortgagees. Every agreement for the performance of labor or the furnishing of materials to the Common Area, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien for Assessments hereunder.

Section 2.7 Leases Of Lots. Any lease agreement between an Owner and a lessee for the lease of such Owner's Lot (including the residence thereon) shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation and the By-laws of the Association, and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Lots shall be in writing. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

Section 2.8 Declarant's Covenant To Convey Title To Common Area. Declarant hereby covenants for itself, its successors and assigns, that it will convey and assign its rights and responsibilities to the easements described in Section 2.4 and convey to the Association fee simple title to those portions of the Common Area that do not lie within the boundaries of any Lot at a time or times of Declarant's choosing after at least ten (10) Lots have been sold, but in no event later than January 1, 2014. The portions of the Common Area conveyed to the Association shall be free from monetary liens but subject to the easements established by this Declaration and/or depicted on the Plats. The Association shall accept the conveyance(s) from Declarant of such Common Area pursuant to this Section. Until such time as Declarant has conveyed such portions of the Common Area to the Association, Declarant shall maintain the Common Area and improvements thereon, with the right to use the Annual Assessments, any Special Assessments, and any Special Individual Assessments collected from the Owners for such purposes.

ARTICLE III **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

The Association shall have two classes of voting membership:

Section 3.1 Class A. Class A Members shall be all Owners, with the exception of Declarant and Approved Builders. The Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members but the Members shall cast a single indivisible vote for the Lot owned by them. The vote for such Lot shall be exercised as they determine, but in no event shall more than a single indivisible vote be cast with respect to any Lot.

Section 3.2 Class B. The B Members shall be Declarant and each Approved Builder that owns one or more Lots. The Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership at any

time following (i) the subjection of all of the property described on Exhibit "A" to this Declaration as hereinafter provided and (ii) upon the first to happen of the following events:

- (a) when the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership; or
- (b) the date upon which both Declarant and all Approved Builders voluntarily convert or have converted their Class B memberships into Class A memberships by instrument filed with the Association; or
- (c) on January 1, 2014.

ARTICLE IV. THE ASSOCIATION

Section 4.1 Organization of Association. A South Carolina nonprofit corporation known and designated as The Hammett Pond Homeowners Association, Inc. (the "Association") has been organized to provide for the administration of the Subdivision. The Association shall be the governing body of the Subdivision, shall administer the operation and maintenance of the Common Area, and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and this Declaration. A true copy of the Bylaws of the Association is attached hereto and incorporated herein as Exhibit "B". Every Owner shall be required to be and shall automatically be a member of the Association by virtue of its ownership interest in a Lot. Membership shall be appurtenant to and shall not be separated from ownership of a Lot for any reason whatsoever, and shall pass automatically with the conveyance of the fee title to a Lot, notwithstanding any failure of the transferor to endorse or convey to the transferee any certificates or other evidences of such membership. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 4.2 Voting Rights. Each Lot shall be entitled to one (1) vote upon all matters coming before the Association. When more than one person shall own an interest in a Lot, all such Owners shall be members of the Association. Notwithstanding the foregoing, however, the vote for such Lot shall be a single indivisible vote which shall be exercised as the Owners of such Lot shall determine.

Section 4.3 Powers; Lien for Assessment. The organization, duties, powers and responsibilities of the Association shall be as set forth in this Declaration, its Articles of Incorporation, and its Bylaws, together with such duties, powers and responsibilities as may be reasonably implied from or incidental to the foregoing duties, powers and responsibilities, or as may otherwise become reasonably necessary or desirable for the furtherance of the purposes of the Association and the common welfare of the Owners. In the administration of the operation and management of the Common Area, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect Assessments in the manner provided in Article V below and in the Bylaws, and to adopt, promulgate and enforce such rules and regulations in accordance with the Bylaws governing the

use of the Lots and Common Area as the Association may deem to be in the best interest of the Owners. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Lot with respect to which such sum was assessed upon filing of a notice of lien in accordance with the provisions hereof, and shall be enforceable by the Association in accordance with this Declaration and the Bylaws.

Section 4.4 Books and Records. The Association shall maintain current copies of: (a) this Declaration, its Articles of Incorporation, and its Bylaws, as they may be amended from time to time, (b) any rules and regulations adopted under Section 2.4(b) from time to time, and (c) all financial records of the Association. The foregoing items shall be available from the Board for inspection upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage. In addition, within one hundred twenty (120) days following the Association's fiscal year end, the Association shall obtain an annual financial statement for the preceding year compiled or audited an independent certified public accountant.

ARTICLE V COVENANT FOR MAINTENANCE AND ASSESSMENTS

Section 5.1 Creation Of The Lien And Personal Obligation Of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, and Declarant, for each Lot owned by it, is deemed to covenant and agree to pay (a) to the Association: (i) annual Assessments or charges ("Annual Assessments"); (ii) special Assessments for capital improvements ("Special Assessments"); and (iii) special individual Assessments as more particularly described below ("Special Individual Assessments"), such Assessments to be fixed, established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Area; and (ii) a pro rata share of Assessments for public improvements to or for the benefit of a Common Area, together with any late penalties therefor if the Association shall default in the payment of either or both. The Annual Assessments, Special Assessments and Special Individual Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon each Lot against which each Assessment is made from the date such Assessment is made until the date upon which such Assessment is paid. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due; provided, that in the case of a Lot that is owned by more than one Owner, regardless of the manner in which title is held, all Owners of the Lot shall be jointly and severally liable for the entire amount of each such Assessment. The personal obligation for the delinquent Assessments shall not pass to such Owner's successors in title (provided such successors are bona fide third party purchasers for value with no continuing relationship with such Owner) unless expressly assumed by them.

Section 5.2 Purpose Of Assessments.

(a) The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and in particular for the improvements, management, care, maintenance and repair of facilities now or hereafter

devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to:

(1) the cost of improvements, repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, and the payment of taxes assessed against the Common Area;

(2) the maintenance, repair and support of open space and any storm water drainage, detention and/or retention system within the Common Area which has not been accepted for dedication or maintenance by or is not maintained pursuant to one or more easements by a governmental or quasi-governmental entity, district or subdistrict, or private utility company;

(3) the procurement and maintenance of liability insurance, fidelity bonds and/or other insurance in accordance with the By-laws;

(4) the improvement, maintenance and repair of the easements located on or within the Common Area, or which are reserved or granted for the benefit of the Association, and as may be shown on the Plats;

(5) the maintenance of entrance ways, landscaping and lighting of the Common Area and any landscaping easements, the lighting of streets (whether public or private), and the payment of Common Area charges for debris removal, garbage collection, municipal water and sewer services;

(6) the costs associated with duties of the Architectural Committee;

(7) the employment of attorneys, accountants, professional management companies, surveyors, engineers and other agents to assist or represent the Association when necessary;

(8) normal, customary, prudent, and adequate reserves to defray unexpected expenses, to anticipate increases in any of the foregoing, to provide for replacement of improvements within the Common Area, and to anticipate future capital expenditures, and for any other foreseeable expenses for which the Association is responsible pursuant to the terms of this Declaration.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Property which the Association may be expressly obligated to maintain. Such reserve fund is to be established out of the Annual and Special Assessments.

(c) The Association may establish a working capital fund equal to the aggregate of two months' Annual Assessments (as described in Section 5.3) for each Lot. If established, each Lot's share of said working capital fund shall be collected from the

purchaser and transferred to the Association at the time of the closing of the initial sale of each Lot to a party other than Declarant or an Approved Builder. The working capital fund shall be maintained in a separate account for the use and benefit of the Association and shall be used to meet unforeseen expenditures, or to acquire furniture, equipment, or services deemed necessary or desirable by the Board of Directors of the Association. All sums paid into the working capital fund are in addition to and not in lieu of regular Assessments for common expenses.

(d) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Common Area, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-laws of the Association. As monies for any Assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer this Membership interest, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of the divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or Assessments of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Common Area.

Section 5.3 Determination and Payment of Annual Assessment. The Board shall fix the annual Assessments applicable to the Lots for each calendar year, not less than thirty (30) days in advance of such year, based upon the prior year's receipts and disbursements, anticipated cost increases or decreases, anticipated extraordinary expense requirements, and anticipated prudent reserves. Upon such determination, the Board shall give written notice to each Owner of the forthcoming annual Assessment applicable to each Lot.

Section 5.4 Maximum Annual Assessment. Until December 31, 2005, the maximum Annual Assessment shall be Six Hundred and no/ 100 (\$600.00) Dollars per Lot.

(a) The maximum Annual Assessment for the calendar years 2004 and 2005 and for each calendar year thereafter shall be established by the Board and may be increased by the Board without approval by the Membership by an amount not to exceed ten percent (10%) of the maximum Annual Assessment of the previous year.

(b) The maximum Annual Assessment for the calendar year immediately following 2005 and for each calendar year thereafter may be increased without respect to Section 5.4(a) or in an amount in excess of such maximum with the concurrence of a sixty-seven (67%) percent affirmative vote of the total Lot votes entitled to vote at a meeting of the Owners duly called by the Board for such purpose.

Section 5.5 Special Assessments. The Board may levy, in any calendar year, a Special Assessment for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; provided that any such Assessment shall have the assent of a sixty-seven (67%) percent affirmative vote of the total Lot votes entitled to vote at a meeting of the Owners duly called by the Board for such purpose.

Section 5.6 Special Individual Assessments. The Board shall have the power to levy a Special Individual Assessment applicable to any particular Lot Owner: (i) for the purpose of paying the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Area, whether occasioned by an act or omission of such Owner, a member of such Owner's family, or such Owner's agents, guests, employees or invitees, and not as a result of ordinary wear and tear; and (ii) for the payment of actual services rendered, fines, penalties or other charges imposed against any Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the By-Laws, or any rules and regulations promulgated by the Association pursuant to this Declaration or the By-Laws. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least ten (10) days prior to the date upon which such Special Individual Assessment is due.

Section 5.7 Notice And Quorum for Assessment Decisions. Written notice of any Association meeting called for the purpose of taking any action (to the extent that a meeting is required hereby) under this Article V shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies representing sixty percent (60%) of the eligible Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called in the same manner but upon not less than ten (10) days' notice in advance of the meeting, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 5.8 Rate Of Assessments. Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semiannual or annual basis as is approved by the Board. The foregoing notwithstanding, the Annual Assessments and Special Assessment for each Lot owned by an Approved Builder and unoccupied as a residence shall be one-third (1/3) of the Annual Assessments and Special Assessment for each Lot not owned by an Approved Builder. Lots owned by Declarant shall be exempt from both Annual Assessments and Special Assessments. Special Individual Assessments shall be established, assessed and collected as described in Section 5.6.

Section 5.9 Date And Commencement Of Annual Assessment; Due Dates. The Annual Assessments provided for herein shall commence on the first day of the first month following the recordation of this Declaration in the Office of the Register of Deeds for Greenville County. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year for which such Annual Assessment is issued. The Board shall set and collect all Annual Assessments, Special Assessments and Special Individual

Assessments. At least thirty (30) days in advance of each Annual Assessment period, the Board shall fix the amount of the Annual Assessment and promptly thereafter the Board shall cause written notice thereof to be sent to every Owner. In the event the Board shall fail to fix the amount of the Annual Assessments in advance of the Annual Assessment for any given period becoming due, the Annual Assessment fixed for the immediately preceding year shall continue in effect until a new Annual Assessment amount is fixed. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.10 Reserve Fund. The Association shall establish and maintain from Annual Assessments an adequate reserve fund for the periodic maintenance, repair and replacement of all Common Areas, and all improvements thereon, which the Association shall be obligated to maintain.

Section 5.11 Effect Of Nonpayment Of Assessments; Remedies Of The Association. Any Annual Assessments Special Assessment or Special Individual Assessment not paid within thirty (30) days after its due date shall bear interest from the due date at the rate of twelve (12%) percent per annum or the highest rate allowed by law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien created herein against the Lot in the same manner as prescribed by the laws of the State of South Carolina for the foreclosure of mortgages, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for an Assessment provided for herein by nonuse of the Common Area or abandonment of such Owner's Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the Assessments provided for herein.

Section 5.12 Association Default In Tax Or Public Assessment Payments. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or Assessments for public improvements to or for the benefit of the Common Area, or any other taxes of any nature, each Owner of a Lot in the Subdivision shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or Assessments (including any late payments penalties) in an amount determined by dividing the total taxes and/or Assessments and/or penalties due the governmental authority by the total number of Lots in the Subdivision. Lots owned by Class B Members shall have the same responsibility for such payments as is set forth in Section 5.8.

Section 5.13 Subordination Of Association Lien To Mortgages. The liens provided for in this Article V shall be subordinate to the lien of any Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien or liens provided for in this Article. However, the sale or transfer of any Lot which is subject to a Mortgage, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien

thereof, but the liens provided for herein shall continue to be subordinate to the lien of any Mortgage.

Section 5.14 Assessment Rolls and Certificates. The budget and record of payment of all Assessments shall be set forth upon a roll of the Lots which shall be available from the Board for inspection at all reasonable times by Owners. Such rolls shall indicate for each Lot the name and address of the Owner, the Assessments for all purposes and the amounts paid and unpaid of all Assessments. The Association shall, upon demand and for a reasonable charge, furnish a Certificate signed by an officer of the Association setting forth whether or not the Assessments upon a specified Lot have been paid, the amount (if any) so paid, and the amount (if any) that is due and unpaid. A properly executed Certificate of the Association as to the status of Assessments on a Lot shall be binding upon the Association against any third party (but not the affected Owner) as of the date of its issuance.

ARTICLE VI ARCHITECTURAL CONTROL

Section 6.1 Review Of Plans And Specifications. All residences, decks, patios, driveways, walls, fences and other structures and improvements initially constructed on Lots by Approved Builders, including landscaping (collectively, "Initial Improvements") shall be built in accordance with Plans (as hereinafter defined) which have been previously approved by Declarant. Other than the Initial Improvements, no building, addition, enclosure, fence, wall, porch, deck, driveway, or any other permanent structure or improvement (collectively "Improvements"), including, without limitation, the alteration or painting of the exterior surface of any existing Improvement or Initial Improvement or material alteration to the approved landscaping plan, shall be undertaken upon any Lot unless the plans and specifications and location of the proposed Improvement shall have been expressly approved in writing by the Architectural Committee. No subsequent alteration or modification of any existing Improvements, Initial Improvements or construction, erection or installation of additional Improvements may be undertaken or allowed to remain on any Lot without the review and express written approval of the Architectural Committee, subject to Section 6.6 below.

Section 6.2 Architectural Committee. Until such time as the Class B membership shall cease, Declarant shall annually appoint the members of the Architectural Committee, which shall be composed of at least three (3) and not more than five (5) persons. At such time as the Class B membership ceases, the Board shall appoint the members of the Architectural Committee. The exact number of members of the Architectural Committee and the length of their terms may be altered by Declarant or the Board, as applicable, from time to time. Each member shall be generally familiar with residential and community development design matters and shall be knowledgeable about Declarant's and the Association's concern for a high level of taste and design standards within the Property. In the event of the death or resignation of any member of the Architectural Committee, Declarant or the Board, as applicable, shall have full authority to designate and appoint a successor. Members of the Architectural Committee may be removed and replaced by Declarant or the Board, as applicable, at any time with or without cause, and without prior notice. At any time, Declarant may elect not to designate the number of and/or appoint the members of the Architectural Committee and may assign this right and responsibility

in writing to the Board. In all matters before the Architectural Committee, a majority vote of its members in attendance at a duly call Architectural Committee meeting shall govern.

Section 6.3 Procedure. No Improvement (other than the Initial Improvements) shall be erected, remodeled or placed on any Lot until all plans and specifications and a site plan therefor have been submitted to and approved in writing by the Architectural Committee, as to:

- (a) quality of workmanship and materials, adequacy of site dimensions and facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (c) location with respect to building set back lines, easements, topography, and finished grade elevation and effect of location and use on neighboring Lots and Improvements situated thereon and drainage arrangements; and
- (d) other standards set forth within this Declaration or as may be set forth within bulletins promulgated by the Architectural Committee, or matters in which the Architectural Committee has been vested with the authority to render a final interpretation and decision.

The Architectural Committee is authorized to request the submission of samples of proposed construction materials. Any material modification or change to the approved Plans must again be submitted to the Architectural Committee for its inspection and approval. Once the Architectural Committee has issued its written approval of the Plans for the proposed Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within the time set therefor by the Architectural Committee in its written approval (but in no event later than one (1) year after such approval), such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced on the subject Lot, the Plans therefor must again be approved by the Architectural Committee pursuant to this Article.

Section 6.4 Committee Guidance. The Architectural Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and shall carry forward the spirit and intention of this Declaration. Architectural standards bulletins or other guidelines issued by the Architectural Committee shall be used by the Architectural Committee as a guide to assist the Architectural Committee in reviewing any proposed plans, specifications and materials submitted to the Architectural Committee for approval. In any event, such architectural standards bulletins and/or guidelines may be revised and amended at any time by the Architectural Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications or other materials submitted to the Architectural Committee for approval. Current copies of the architectural standards bulletins shall be available to interested persons at the principal office of the Association for a reasonable cost. Although the Architectural Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Architectural Committee shall be responsive

to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand).

Section 6.5 Enforcement. In addition to Declarant's and the Association's rights to enforce the provisions of this Declaration as set forth in Section 12.1 of this Declaration, Declarant, the Association, and the Architectural Committee shall each have the specific, nonexclusive right to enforce the provisions contained in this Article and/or to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein. In the event that the Architectural Committee, Declarant or the Association resorts to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of this Article, the Architectural Committee, Declarant, or the Association, as applicable, shall be entitled to recover court costs, reasonable attorneys' fees and expenses incurred in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the offending Owner's Lot.

Section 6.6 Effect Of Failure To Approve Or Disapprove. If an Owner erects, commences the erection, or permits the erection of any Improvements on a Lot which have not been approved under this Article VI and a suit to enjoin the erection of or require the removal of such Improvements is not brought by any person or entity having standing to sue within four (4) months from the commencement of construction of such Improvements, then this Article shall be deemed to have been fully satisfied. If the Architectural Committee fails to approve or disapprove the design of any proposed Improvements within thirty (30) days after Plans therefor have been submitted and received, approval will not be required, and the requirements of this Article shall be deemed to have been fully satisfied; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Architectural Committee if they contain erroneous data or present inadequate information upon which the Architectural Committee can arrive at a decision. Notwithstanding the foregoing, the Architectural Committee shall have no right or power; either by action or failure to act, to waive or grant any variance relating to any mandatory requirements specified in the Declaration.

Section 6.7 Right Of Inspection. The Architectural Committee shall have the right, at its election, to enter upon any Lot during (and after) preparation, construction, erection, or installation of any Improvements to assess whether such work is being performed in conformity with the approved Plans.

Section 6.8 Limitation Of Liability. Neither the Architectural Committee, the members thereof, nor Declarant shall be liable in damages or otherwise to anyone submitting Plans and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance (except where occasioned by gross negligence or intentional conduct) arising out of services performed pursuant to this Declaration.

Section 6.9 Disclaimer. DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL COMMITTEE AND EACH MEMBER THEREOF, ON BEHALF OF THEMSELVES AND THEIR AGENTS AND CONSULTANTS, HEREBY DISCLAIM ANY

AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, MARKET VALUE, CONSTRUCTION COSTS OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE OR APPROVED BY DECLARANT, THE ASSOCIATION, OR THE ARCHITECTURAL COMMITTEE AND NEITHER DECLARANT, THE ASSOCIATION, NOR THE ARCHITECTURAL COMMITTEE, OR ANY MEMBER THEREOF SHALL BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF ANY REVIEW, APPROVAL, ACCEPTANCE, INSPECTION, PERMISSION OR CONSENT WHICH MUST BE OBTAINED FROM DECLARANT, THE ASSOCIATION, OR THE ARCHITECTURAL COMMITTEE, WHETHER GRANTED OR DENIED.

Section 6.10 Compensation. No member of the Architectural Committee shall be entitled to compensation arising out of services performed pursuant to this Article except an architect or engineer who has been requested by Declarant or the Architectural Committee to perform a professional review of the proposed plans. The Association shall reimburse members of the Architectural Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

ARTICLE VII

EXTERIOR MAINTENANCE

Section 7.1 Common Area. Following the transfer of the Common Area from Declarant to the Association, the Association shall maintain all components of the Common Area and all landscape easement areas that are the responsibility of the Association.

Section 7.2 Dwellings And Improvements. Each Owner shall be responsible for the maintenance of the dwelling and structures on such Owner's Lot. Maintenance shall include, without limitation, painting, replacement and care of roofs; gutters, down spouts, windows, shutters, screens, exterior building surfaces, driveways, walks and other exterior improvements.

Section 7.3 Yards. Each Owner of a vacant, un-landscaped or unimproved Lot shall cut back and maintain all portions of such Lot that are adjacent to road rights-of-way, utility lines, and subdivision and roadway signage free of debris, unsightly underbrush, dead trees and dangerous tree limbs. Each Approved Builder and each other contractor constructing Improvements on a Lot shall remove all rubbish, building material wastes and trash resulting from such construction activities and shall not permit any unsanitary conditions to exist on such Lot during construction thereon. Upon completion of the Initial Improvements on a Lot, the Owner of such Lot shall maintain (or require a service provider to maintain) the landscaping of such Owner's yard in a high quality condition and in accordance with the integrity and design of the landscaping plan approved by Declarant or the Architectural Committee.

Section 7.4 Association Rights. In the event that an Owner neglects or fails to maintain his or her yard and/or the exterior of his or her dwelling in a manner consistent with other Lots and dwellings in the Subdivision, the Association may, but shall not be obligated to, provide such exterior maintenance as specified above, which shall be assessed against the Owner as a Special Individual Assessment and which, if such cost remains unpaid, shall become a lien against the Lot of such Owner. Notwithstanding the foregoing, however, the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance. The determination as to whether an Owner has neglected or failed to maintain a Lot and/or dwelling in a manner consistent with other Lots and dwellings in the Subdivision shall be made by the Board, in its sole discretion.

Section 7.5 Access And Reimbursement. In order to enable Declarant or the Association to accomplish the foregoing, Declarant hereby reserves for itself, the Association, and their employees, agents and independent contractors, the right and easement to unobstructed vehicular and pedestrian access over and upon such portions of each Lot at all reasonable times and in such reasonable manner as shall be reasonably necessary to enable Declarant, the Association, and their employees, agents and independent contractors, as the case may be, to perform only the exterior maintenance as provided in this Article. In the event the Association performs such exterior maintenance, repair or replacement, the cost of such maintenance, replacement or repairs shall be assessed to the Owner as a Special Individual Assessment and if such Special Individual Assessment remains unpaid, it shall become a lien against the Lot of such Owner. Declarant, the Association, and their respective directors, officers, agents, employees, independent contractors, members and managers shall not be liable for any personal injury or property damage or other incidental or consequential damages occasioned by any act or omission in the inspection, repair or maintenance of any yard, dwelling or Lot as described in this Article VII in the absence of gross negligence or intentional misconduct.

ARTICLE VIII USE RESTRICTIONS

Section 8.1 Residential Use Of Property. All Lots shall be used for single family, residential purposes only, and no business or business activity including but not limited to repair shops, daycare, nursing facilities or church congregation meetings shall be carried on or upon any Lot at any time. Nothing herein shall prevent Declarant or any Approved Builder from using any Lot owned by Declarant or such Approved Builder for the purpose of carrying on business related to the development, improvement and sale of Lots and dwellings thereon. To the extent allowed by applicable zoning laws, Owners shall have the right to maintain private offices in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling and does not involve the conduct of business with customers, clients or others in person upon a Lot.

Section 8.2 Setbacks And Building Lines. Each Improvement and all Initial Improvements which shall be erected on any Lot shall be located within the building and setback lines for each Lot as set forth on the Plats. In no event shall any dwelling be erected and located

upon any such Lot in a manner which violates the requirements and provisions of any applicable zoning ordinances or governmental subdivision regulations.

Section 8.3 Walls And Fences. No fence, wall or gate shall be erected, placed, or altered on any Lot unless approved in writing by Declarant or the Architectural Committee, as applicable, in its sole discretion pursuant to Article VI of this Declaration prior to the commencement of construction. Any approved fence, wall or gate shall be composed of materials other than chain link, wire, or metal, which materials and composition shall in any event be subject to the prior written approval of Declarant or the Architectural Committee, as applicable, and shall in no event exceed a height of six (6') feet. Declarant or the Architectural Committee, as applicable, shall have the absolute right to temporarily or permanently remove or relocate any walls, fences, or gates which have not been approved as provided herein, with the cost of such removal or relocation to be assessed to the Owner as a Special Individual Assessment which, if such cost remains unpaid, shall become a lien against the Lot of such Owner.

Section 8.4 Subdivision Or Combination Of Lots. One or more Lots or parts thereof may be subdivided and/or combined with adjacent Lots to form a single building Lot when (i) such combination is permitted by all applicable laws and regulations and (ii) such combination is approved, in writing, by Declarant (if prior to the time that the Class B membership shall cease) or by the Architectural Committee thereafter, in its sole discretion. In such event, the building line requirements provided herein and those shown or noted on the Plats shall apply to such re-subdivided or combined Lots and side line easements set forth on the Plats shall be moved to follow the new side line so that such easements shall run along the newly established side Lot line.

Section 8.5. Building Requirements. The heated living areas of the main structure, exclusive of open porches, porte-cocheres, garages, carports, and breezeways of dwellings constructed upon Lots, shall not be less than two thousand (2,000) heated square feet for a single level house and two thousand two hundred (2,200) heated square feet for a two story house.

Section 8.6 Obstructions To View At Intersections. No part of any structure nor the lower branches of trees or other vegetation on any Lot shall be permitted to obstruct the view at street intersections.

Section 8.7 Delivery Receptacles And Property Identification Markers. The location, color, size, design, lettering, and all other particulars of receptacles for the receipt of mail, newspapers, or similarly delivered materials, and of name signs for such receptacles and property identification markers upon Lots shall be subject to the prior written approval of Declarant or the Architectural Control Committee, as applicable.

Section 8.8 Use Of Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, unless approved in writing by the Architectural Committee. No trailer, mobile home, motor home, modular home, shell home, camper, shack, tent, or other structure of a similar nature shall be used as a residence, either temporarily or permanently on any Lot. This Section shall not be construed to prevent Declarant or any

Approved Builder from using sheds, trailers or other temporary structures during construction. Any detached structures, including without limitation garages, must be approved in writing by the Architectural Committee and located to the rear of the main dwelling and constructed within the applicable building setback lines for the Lot.

Section 8.9 Completion Of Construction. Declarant and the Association, as applicable, shall each have the right to take appropriate legal action, whether at law or in equity, to compel the immediate completion of: (i) any Initial Improvements not completed within one (1) year from the later of the date of the issuance of the building permit or the commencement of construction; and (ii) any Improvement or landscaping (other than any Initial Improvement) not completed in accordance with Lot development plans and specifications approved by Declarant or the Architectural Committee, as applicable, within one (1) year from the date of such commencement.

Section 8.10 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes, do not cause unsanitary conditions, do not constitute a nuisance, and do not constitute an unreasonable threat to any Owner, family member, guest, invitees or others coming into the Subdivision, including specifically, mail carriers, yard workers, delivery persons or meter readers. Subject to the foregoing, an Owner may keep no more than a total of two (2) dogs and/or cats per Lot (except for newborn offspring of such household pets which are under nine (9) months in age) and a reasonable number of other generally recognized household pets, as determined by the Board in its sole discretion from time to time, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds). Notwithstanding the foregoing sentence, no potbellied pigs, snakes, pit bulldogs, rottweillers, Doberman pinschers, or other animals determined by the Board, in its sole discretion from time to time, to be dangerous may be brought onto or kept on the Property at any time. No pet shall be permitted upon the Common Areas unless carried or leashed by a person that can control the pet. The Owner of a pet shall be responsible for any noise, nuisance, or odor that such animal may create and for promptly and properly disposing of such pet's waste. All animals must be vaccinated and licensed as required by any state and local ordinances. Each Owner shall indemnify and hold Declarant and the Association harmless from any claim resulting from any action of such Owner's pet, and shall repair at the Owner's sole expense any damage to the Common Area or another Lots caused by such pet. If any Owner violates any provision contained in this Section 8.10 more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Subdivision upon not less than ten (10) days' written notice; provided, further, that the Board may remove immediately and without notice any pet determined by the Board, in its sole discretion, to present an immediate danger to the person, health, safety or property of any Owner or the immediate family of an Owner.

Section 8.11 Offensive Activities. No noxious, offensive or illegal activities shall be carried on or allowed to exist in the streets of the Subdivision, within the Common Area, or upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the Owners of other Lots, including, but not limited to, offensive floodlights, bells, telephones,

music, noise level of pets, air pollutants or surface water pollutants. In general, no activity shall be carried on nor conditions maintained by any Owner either at such Owner's Lot or upon the Common Area which despoils the appearance of the Subdivision. The Board shall have the right to restrict outdoor lighting and/or any noise or activity which the Board may determine to be a nuisance to any other Owner.

Section 8.12 Signs. No temporary or permanent signs or advertising devices shall be erected or placed on any Lot or within the Common Area, other than (i) signs used to identify and advertise the Subdivision as a whole, during the development and construction period, and (ii) signs for selling or leasing Lots and/or houses, but only if one sign of not more than four (4) square feet is used. Any other proposed signs are subject to the prior review and written approval of the Architectural Committee. The provisions of this Section 8.12 shall not apply to notices posted in connection with judicial or foreclosure sales conducted with respect to a Mortgage or to any other regulatory or judicial proceedings.

Section 8.13 Aesthetics, Screening, Underground Utility Service. Clotheslines, garbage cans and window air conditions, shall be screened to conceal them from view of neighboring Lots and streets. All utility service lines to and from residences shall be underground.

Section 8.14 Antennae. No radio, television, data or voice transmission or reception towers, dishes or antennae shall be erected on any structure or within the Property without the prior written approval of the Architectural Committee.

Section 8.15 Parking; Vehicle Storage. Upon completion of a dwelling upon a Lot, no trailers, mobile homes, boats, school buses, trucks or commercial vehicles over one (1) ton capacity, junked vehicles, or vehicles on blocks shall be kept, stored or parked overnight either on any street or on any Lot, except in enclosed garages. In addition, no vehicle of any kind may be kept, stored or parked on any unpaved area of a Lot or Common Area. Notwithstanding the foregoing, passenger automobiles may be parked in driveways upon Lots, if the number of vehicles owned by the Owner of a Lot exceeds the capacity of the garage located on the Lot. The foregoing will not be interpreted, construed or applied to prevent the temporary nonrecurrent parking of any vehicle, boat or trailer for a period not to exceed 48 hours upon any Lot. Vehicle parking shall not be permitted along or upon roadways within the Subdivision other than temporary passenger vehicle parking for guests and invitees of Owners and only so long as such parking does not unreasonably obstruct normal vehicular usage of such roadways. The foregoing limitations and restrictions shall not apply to an Approved Builder during such time as it is constructing the Initial Improvements upon a Lot.

Section 8.16 Garbage And Refuse Disposal. No Lot or street shall be used or maintained as a dumping ground for rubbish, yard trash, branches, leaves or grass clippings. Trash, garbage or other waste shall not be kept except in sanitary containers designed for that purpose. All incinerators or other equipment for the storage or disposal of such waste material shall be kept in a clean and sanitary condition. The Association may contract with a garbage/trash removal service (the "Trash Removal Service") from time to time to provide periodic pickup of garbage and yard trash. As long as the Association elects to maintain a selected Trash Removal Service, each Owner shall use such service and the costs of this service

shall be paid by each Owner in addition to the Annual Assessment. The Association at any time and from time to time may terminate the selected Trash Removal Service program in which case the Owner shall arrange for the pickup and removal of his or her own garbage and yard trash. If rubbish, litter or other trash remains on any Lot in excess of fifteen (15) days, the same shall be removed by the Owner of such Lot, at the Owner's expense, upon written request of the Association. If the Owner refuses to move such trash, the Association, at its option, shall have it removed and the cost thereof shall be assessed to the Owner as a Special Individual Assessment, which cost shall become a lien against the Lot of such Owner.

Section 8.17 Changing Elevations. No Owner shall excavate or extract earth from any Lot or Common Area for any business or commercial purpose. No elevation changes shall be permitted which materially affect the surface grade of surrounding Lots or Common Area, unless approved in writing by the Architectural Committee. The foregoing restrictions shall not prohibit an Approved Builder from grading and/or altering the elevation of a Lot in connection with the construction of Initial Improvements upon such Lot in conformity with the Plans that have been approved by Declarant.

Section 8.18 Model Homes. Declarant, as well as Approved Builder(s), shall have the right to construct and maintain model homes on any of the Lots. "Model Homes" shall be defined as those homes used for the purpose of inducing the sale of other homes within the Property.

Section 8.19 Driveways and Garage Entrances. All driveways and garage entrances shall be constructed of concrete or other substance approved in writing by Declarant or the Architectural Committee, as applicable, and of a uniform quality.

Section 8.20. Swimming Pools. No above-ground swimming pools may be erected or constructed on any Lot other than small, portable pools designed for small children. Any approved swimming pool must be located at the rear of any dwelling on a Lot and have at least a four-foot security fence around its immediate apron perimeter that remains locked at all times except when in use by the Owner, in addition to any other fencing that may be permitted by this Declaration.

Section 8.21. Aesthetics, Natural Growth, Screening. Trees which have a diameter in excess of six (6) inches measured two (2) feet above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior written approval of the Architectural Committee.

Section 8.22 Waiver Of Setbacks, Building Lines And Building Requirements. Either the Declarant or the Architectural Committee may waive minor unintentional violations (ten percent (10%) or less) of the setbacks and building lines provided for in Section 8.2. Such waiver shall be in writing and recorded in the Office of the Register of Deeds for Greenville County. A recorded document executed by Declarant or the Architectural Committee, as applicable, shall be conclusive evidence that the requirements of Section 8.2 have been complied with. The Architectural Committee may also handle violations of setback and boundary line by amending the applicable Plat (provided the consent of any affected Owner is obtained). Nothing contained

herein shall be deemed to allow Declarant or the Architectural Committee to waive violations which are enforceable by governmental authorities.

Section 8.23 Fuel Storage Tanks. All heating oil, propane, or other fuel storage tanks shall be buried underground or screened consistent with applicable safety precautions. Each Owner shall be responsible for any dumping, leakage or spillage, and for any cleaning thereof, and shall indemnify the Association, other Owners, and Declarant of all liability, expenses and causes of action resulting from such spillage or leakage.

Section 8.24 Fireworks. No fireworks of any kind shall be used or stored on any Lot, or in the Common Area or on any portion of the Property or upon any public or private road within the Subdivision, unless prior approval is granted by the Board.

Section 8.25 Hunting And Firearms. The Subdivision and all of the Property is and shall be considered a wildlife sanctuary. Hunting of any animal or bird by any means, including but not limited to gun, rifle, pistol, bow and arrow, crossbow, dart, blowgun or other means, is prohibited. The discharge of any firearm, unless in self defense, is prohibited in the Subdivision.

Section 8.26 Boundary Pins. No property pins or other property boundary markers shall be removed by any Owner. In the event the same are removed or disturbed, it shall be the responsibility of the Owner to replace them at their correct location.

Section 8.27 Conflict With Statutes Or Regulations. In the event of any conflict of the provisions hereof with any zoning ordinances or statutes or subdivision laws or regulations, which may be in effect from time to time, and which would require a more stringent or strict standard or use than required or permitted herein, then the terms, conditions and requirements of such more stringent law, statute or regulation shall apply.

Section 8.28 Prohibitions on Use of Common Area. The Common Area shall not be used for the storage of personal property of any kind, shall not be obstructed by any Owner in any way, and shall not be used by Owners for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either at such Owner's Lot or upon the Common Area which despoils the appearance of the Subdivision.

Section 8.29 Leases. In order to preserve the character of the Subdivision as predominantly Owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Lots shall be allowed only in accordance with and subject to the requirements of this Section 8.29. "Leasing" as used in this Section 8.29 shall mean the regular and exclusive occupancy of the Improvements upon a Lot by any Person other than the Owner or the immediate family of the Owner. No Lot may be leased unless the Owner of the Lot shall first have applied for and thereafter received from the Board a "Leasing Permit", which shall establish the terms and duration pursuant to which an Owner shall be permitted to lease a Lot. An Owner's request for a Leasing Permit shall be approved so long as the current, outstanding Leasing Permits do not exceed thirty (30%) percent of the total Lots (excluding Lots owned by Declarant). Should the number of outstanding Leasing Permits at any time exceed thirty (30%) percent of the total Lots (excluding Lots owned by Declarant), no further Leasing

Permits shall be issued, except in cases of documented hardship as determined by the Board in its sole discretion, until such time as the number of current outstanding "Leasing Permits" shall fall to thirty (30%) percent or less of the total Lots (excluding Lots owned by Declarant). Any lease of a Lot shall be in writing, with a copy thereof to be provided to the Board, and shall provide that the terms of the lease shall be subject and subordinate in all respects to this Declaration and that any failure by the lessee to comply with all of the terms of this Declaration shall constitute a default under the Lease. No Lot may be leased for a period shorter than one (1) year, and leases of less than the entire Lot shall not be permitted; provided, however, that the foregoing limitations shall not apply to a Mortgagee who has acquired ownership of a Lot by foreclosure or deed in lieu of foreclosure.

ARTICLE IX EASEMENTS

Section 9.1 Utilities and Drainage. Easements for installation, maintenance and removal of utilities (including but not limited to water, electricity, gas, sewer, telephone, cable television, other communications services) and for storm water drainage facilities are reserved by Declarant as indicated on the Plats. In addition to the easements which are set forth on the Plats, Declarant hereby reserves to itself (until the Class B membership shall terminate) and to the Association thereafter a five (5) foot drainage and utilities easement along all side and interior Lot lines. No structures, planting or other material shall be placed or permitted to remain within such easement areas which may interfere with the installation, maintenance or removal of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The reservation of such easements shall include the right to cut trees and shrubs, grade swales or ditches, lay pipes and do such other things as may be reasonably necessary and required to provide necessary drainage. Declarant and the Association shall each have the right to perform such work, but shall not be required to do so. The easement areas that affect each Lot shall be maintained by the Owner of the Lot, except for those improvements for which the Association, a public authority, or a utility company is responsible. An easement is hereby established for the benefit of any public authority, utility service provider, and any other person or firm providing utility services to the Property under agreement with or at the direction of Declarant or the Association, over all such Common Area as may be reasonably necessary for the setting, removal and reading of meters, and the maintenance, replacement and removal of water, sewer and drainage facilities, and for the fighting of fires and collection of garbage, if available. Declarant and the Association, as applicable, shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as may be necessary or desirable for the providing of service or utilities to the Common Area or Lots.

Section 9.2 Landscaping and Other Easements. Easements for the installation, maintenance, repair, replacement, and removal of Subdivision signs, Subdivision landscaping and lighting surrounding the same, and general Subdivision landscaping are hereby granted and reserved by Declarant as indicated on the Plats, including specifically and without limitation a twenty (20') foot landscaping easement along the edge of the right-of-way of Hammett Road (S-23-522) upon those Lots abutting said right-of-way. Declarant shall further have the right to grant such easements as may be necessary or desirable to provide utilities, including maintenance

and service easements for all such power, water, waste water, telephone, cable television, or such other utilities and services as are or may hereafter be provided to the Subdivision.

Section 9.3 Binding Effect. The easements granted and reserved in this Declaration shall run with the land in perpetuity, notwithstanding any earlier expiration or termination of this Declaration, and shall be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Property.

ARTICLE X

RIGHTS RESERVED UNTO LENDERS

Section 10.1 Obligation Of Association To Mortgagees. So long as any Mortgagee shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Mortgagee shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and, upon request, to be furnished with at least one (1) copy of any annual financial statement and report of the Association.

(b) To be given notice by the Association of (i) the scheduling of any meeting of the Members to be held for the purpose of considering any proposed action that requires consent of a specified percentage of Mortgagees; (ii) any condemnation or casualty loss affecting the Common Areas or any portion thereof; (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (iv) any delinquency in the payment of any Assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a Mortgage held by a Mortgagee, such notice to be given in writing and to be sent to the principal office of such Mortgagee, or to the place which it may designate in writing.

(c) Any decision to terminate the Association for reasons other than substantial destruction or condemnation of the Property shall require the prior written consent of Mortgagees representing at least sixty-seven percent (67%) of the votes allocated to Lots subject to Mortgages held by Mortgagees. Any amendment to the Declaration or the By-laws which changes any of the following shall require the prior written consent of Mortgagees representing at least fifty-one percent (51%) of the votes of Lots that are subject to Mortgages held by Mortgagees: (i) any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association under Article II hereof; (ii) voting rights; (iii) Assessments, Assessment liens or subordination of such liens; (iv) reserves for maintenance, repair and replacement of Common Area maintained by the Association; (v) insurance or fidelity bonds; (vi) responsibility for maintenance and repairs; (vii) reallocation of interests in the Common Area or rights to their use; (viii) convertibility of Lots into Common Area; (ix) imposition of any restriction on an Owner's right to sell or transfer his Lot; (x) restoration or repair of the Common Area (after damage insured by the hazard insurance or after partial condemnation) in a manner other than as specified in

this Declaration or the By-laws; (xi) any action to terminate the legal status of the Association after substantial destruction or condemnation of the Property occurs; or (xii) any provisions that expressly benefit the Mortgagees. Any amendment to the Declaration that annexes additional Phases into the Property, as hereinafter provided, shall not require any consent from any Mortgages.

Section 10.2 Requirements Of Mortgagee. Whenever any Mortgagee desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by United States Certified Mail, Return Receipt Requested, at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Mortgagee holds any first lien or identifying any Lot or Lots owned by such Mortgagee and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Mortgagee.

ARTICLE XI ANNEXATION OF ADDITIONAL PHASES

Section 11.1 Additional Phases. Declarant shall have the right, at any time and from time to time, unilaterally to annex into the Property and subject to this Declaration as an additional Phase or as additional Phases such portion or portions of the property described on Exhibit "A" attached hereto and incorporated herein, provided that any subsequent Phase shall contain not less than two (2) Lots.

Section 11.2 Annexation Procedure. Additional Phases may be annexed into the Property and subjected to this Declaration upon the filing by Declarant with the Office of the Register of Deeds for Greenville County:

(a) A Plat of the additional Phase, which shall identify and/or depict specifically (i) the Phase number within the Subdivision, (ii) the location and identification of all Lots, Common Area, easements, and roadways within the Phase, (iii) the Lot numbers, square footage and the measured courses and distances of all Lots within the Phase, (iv) the location and identification of all easements and setback lines affecting the Lots within the Phase, (v) the location and identification of any permanent improvements located within the Phase as of the date of the Plat, (vi) such provisions as shall be required by Greenville County in order to dedicate the roadways within such Phase to Greenville County, and (vii) such other information as may be required to be included therein by Greenville County in order to receive subdivision approval and/or recordation approval.

(b) An Amendment to this Declaration executed by Declarant alone which shall (i) describe the Phase (with reference to the Plat thereof to be recorded pursuant to Subsection (a) above), (ii) specifically subject such Phase to the terms and provisions of this Declaration, and (iii) set forth such additional terms and provisions with respect to the Phase so annexed as Declarant shall deem reasonably necessary or desirable.

Section 11.3 Effect of Annexation. Upon recordation of the Phase Plat and the Amendment to this Declaration in accordance with the Requirements of Section 11.2 above, the

Phase identified therein shall be deemed to be annexed into the Subdivision and shall thenceforth be subject to the terms and provisions of this Declaration as a part of the Property.

ARTICLE XII **GENERAL PROVISIONS**

Section 12.1 Enforcement. Declarant, the Association, the Architectural Committee (to the degree specifically granted herein), and each Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of the Declaration, or the Articles of Incorporation or the By-laws of the Association. In the event that Declarant, any Owner, the Architectural Committee, or the Association resorts to litigation to remedy a violation of this Declaration, such Owner, Declarant, Architectural Committee, or the Association, as applicable, shall be entitled to recover losses incurred in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the offending Owner's Lot. Failure by Declarant, the Association, the Architectural Committee, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Property to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

Section 12.2 Severability. Invalidation of any one of the covenants or restrictions set forth in this Declaration by judgment or court order shall not affect any other provision which shall remain in full force and effect.

Section 12.3 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date that this Declaration is recorded in the Office of the Register of Deeds for Greenville County, after which time they shall be automatically extended for successive periods of ten (10) years unless during the final year of such initial or then current renewal term the Owners of not less than seventy five percent (75%) of the total Lot votes entitled to vote at a duly called meeting of the Owners, and not less than fifty-one (51%) percent of all Mortgagees of Lots subject to Mortgages held by Mortgagees, shall agree in writing to terminate this Declaration at the end of such term. In such event, a written instrument setting forth such termination shall be executed and recorded in the real estate records of Greenville County.

Section 12.4 Amendment.

(a) Declarant reserves and shall have the right to unilaterally amend this Declaration without any requirement for consent by any other Owners or Mortgagees whomsoever (i) to annex additional Phases into the Property in accordance with Article XI above, or (ii) for the purpose of resolving any ambiguity in or any inconsistency between the provisions contained herein, or (iii) to make any additional covenants, restrictions, and easements applicable to the Property which do not substantially alter or change the standards of the covenants, conditions, restrictions and easements set forth herein.

(b) Subject to the additional requirements of Section 10.1(c) (if applicable), this Declaration may be amended during the first twenty (20) year period by an instrument signed by Owners of not less than seventy-five percent (75%) of the total Lot votes entitled to vote at a duly called meeting of the Owners, and thereafter by an instrument signed by Owners of not less than sixty-seven percent (67%) of the total Lot votes entitled to vote at a duly called meeting of the Owners. Any amendment must be properly recorded. As long as Declarant or any Approved Builder owns any Lot in the Subdivision, no amendment shall be effective without the written consent of Declarant or such Approved Builder, which consent shall be properly recorded in order to be effective.

Section 12.5 Federal Lending Requirements. Notwithstanding Section 12.4 above, Declarant may (at Declarant's option) amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, and the Veterans Administration, Fannie Mae, Freddie Mac, or other similar agency, provided that such agency approves or consents to such amendment and such amendment is properly recorded.

Section 12.6 Amplification. The provisions of this Declaration are amplified by the Articles of Incorporation and the By-laws of the Association, but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and By-laws on the other, be interpreted, construed, and applied to avoid inconsistencies or conflicting results. In the event of any irreconcilable conflict, however, the provisions of this Declaration at issue shall control over the provisions of the Articles of Incorporation or the By-laws to the contrary, to the extent permitted by law.

Section 12.7 Reservations Of And Assignments Of Rights By Declarant. All rights, powers, easements, and responsibilities reserved unto or to be performed by Declarant herein remain exclusively with Declarant, its successors and assigns, provided, however, Declarant may assign and/or delegate all or any part of such rights, powers, easements, and responsibilities to the Association or other persons or entities.

Section 12.8 Total or Partial Destruction of Common Area Improvements. In the event of a total or partial destruction of any improvements on the Common Area, and if available proceeds of insurance carried pursuant to this Declaration are sufficient to cover eighty-five (85%) of the repair or reconstruction, the Common Area shall be promptly repaired and rebuilt unless within 120 days from the date of such destruction, the Owners of seventy-five (75%) percent or more of the Lots entitled to vote at a duly called meeting, determine that such reconstruction shall not take place. If the insurance proceeds are less than eighty-five (85%) of the cost of reconstruction, reconstruction may nevertheless take place if, within 120 days from the date of destruction, the Owners of seventy-five (75%) percent or more of the Lots elect to rebuild.

Section 12.9 Notice. Any notice required or desired to be given under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United

States mail, postage prepaid, directed to the known Mortgagee or other party entitled to notice, at the last known address for each such party, all as shown on the books and records of the Association at the time such notice is given.

Section 12.10 Availability of Documents. The Association shall maintain current copies of the Declaration, its Articles of Incorporation, the Bylaws, and all published rules and regulations concerning the Property, as well as its own books, records, and financial statements, available for inspection by Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 12.11 Management Contracts. The Association is authorized and empowered to engage the services of any person, firm, or corporation to act as managing agent of the Subdivision at a compensation to be established by the Board and to perform all the powers and duties of the Association; provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon thirty (30) days' notice to the manager without payment of a termination fee.

IN WITNESS WHEREOF, the undersigned, has the foregoing instrument on this 30th day of July, 2004.

Witnesses:

MARTIN & HARRISON HOMES, LLC,
a South Carolina limited liability
company

W. Ludwig Smith
Donna Bastianelli

By: W.R. Martin
W. R. Martin, Member

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

ACKNOWLEDGMENT

I, W. Lindsay Smith, a Notary Public in and for the County and State aforesaid, do hereby certify that W. R. Martin, the duly authorized member of Martin & Harrison Homes, LLC, a South Carolina limited liability company, the Declarant, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 30th day of July, 2004.

W. Lindsey Smith [SEAL]
Notary Public for South Carolina
My commission expires: 8-15-07

EXHIBIT "A"
TO
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS
FOR HAMMETT POND SUBDIVISION

PROPERTY SUBJECTED TO THIS DECLARATION

ALL THAT CERTAIN piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Greenville, lying along the northwesterly edge of the right-of-way of Hammett Road, containing 13.62 acres, according to a plat of survey entitled "Survey for Martin and Harrison Homes, LLC", prepared by Freeland & Associates, Inc., dated January 12, 2004, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 48-A at Pages 79 A&B. Reference is hereby made to said plat for a metes and bounds description thereof.