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Register of Deeds



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ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181**

FILED/RECORDED
December 31, 2013
DORCHESTER COUNTY
REGISTER OF DEEDS

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BRANCH CREEK PHASE 2A TOWNHOMES**

DRAWN BY AND MAIL AFTER RECORDING TO:
HINSON FAULK, P.A.
309 Post Office Drive
Indian Trail, NC 28079

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRANCH CREEK PHASE 2A TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"), dated the 15 day of December, 2013 and is made by and between **SILENT G, LLC**, a North Carolina limited liability company, of 9219 Clerkenwell Drive, Waxhaw, North Carolina 28173 (hereinafter called "Declarant"); **TRUE HOMES, LLC**, a Delaware limited liability company (hereinafter called "True"); and any and all persons, firms or corporations hereafter acquiring any of the within described property.

WITNESSETH:

WHEREAS, Declarant and True are the owners of certain real property located in the Town of Summerville, Dorchester County, South Carolina, being more further described in deed recorded in Book 8725 at Page 174 in the Office of the Register of Deeds for Dorchester County;

WHEREAS, the property described in Deed Book 8725 at Page 174 is a part of an exclusive, mixed use community known as Branch Creek (hereinafter, "Branch Creek" or the "Property"), as more particularly described in the Master Declaration, as hereinafter described;

WHEREAS, the Property will contain different types of real estate uses will each have a separate owner's association that will be a secondary association of a master association known as Branch Creek Owners Association, Inc. (hereinafter, the "Master Association"). The Master Association will coordinate, plan and maintain the common areas and common services which are for the use and benefit of all secondary associations;

WHEREAS, the Declarant has caused a portion of the Property to be subdivided into lots for a residential townhome subdivision known as "Phase 2A-1, Branch Creek Townhomes" as shown on a plat recorded in Map Book M at Page 10 in the Office of the Register of Deeds for Dorchester County (hereinafter, "Phase 2A Branch Creek Townhomes"), and after subdivision, Declarant conveyed several of the lots in the subdivision to True;

WHEREAS, Declarant intends to develop Phase 2A Branch Creek Townhomes into a high quality, residential townhome subdivision. All improvements in the subdivision will be constructed from the highest quality materials and with the highest quality of workmanship to create a unique community. The Declarant has or will form a homeowners association known as **BRANCH CREEK PHASE 2A TOWNHOME ASSOCIATION, INC.** to enforce and to maintain the high quality of Phase 2A Branch Creek Townhomes and to maintain private drives and rights of way and certain other amenities, which may include, but Declarant is not required to provide, an entranceway, entranceway signage, decorative street lighting, and such other common areas and amenities that the Declarant or the secondary association may provide for the general welfare and recreation of the owners. Branch Creek Phase 2A Townhome Association, Inc. will be a secondary association of the Master Association;

WHEREAS, it is in the best interest of the Declarant and True, as well as to the benefit, interest and advantage of each and every person or other entity hereafter acquiring any of the said

lots, that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed, set forth and declared to be covenants running with the land;

WHEREAS, Declarant desires to provide for the preservation of the values and amenities, the desirability and attractiveness of the real property in the development, and the continued maintenance and operation of the common areas as may be provided herein; and

WHEREAS, it is the Declarant's goal to develop Phase 2A Branch Creek Townhomes in such a manner that a high quality neighborhood with houses that will maintain a high resale value and with a neighborhood that will be a desirable place to live is created. To accomplish this goal, all aspects of the development of Phase 2A Branch Creek Townhomes must be coordinated such that there will be harmony between the architectural design, the landscaping, signage, lighting and all aspects of the improvements as they fit into the landscape of Phase 2A Branch Creek Townhomes. The location, design and exterior appearance of the houses, landscaping and other improvements on a Lot will be made with the intention that the improvements will blend in and accent the image of Phase 2A Branch Creek Townhomes. The harmony of the development and the requirement of the highest quality of materials and workmanship for all improvements on the Lots and common areas will benefit all Owners and enhance the value of each Owner's Lot; and

WHEREAS, True consents to all of the Use Restrictions (as hereinafter defined) imposed by this Declaration on the lots owned by True; and

NOW THEREFORE, in consideration of the premises, the Declarant agrees with True and with any and all persons, firms, corporations or other entities hereafter acquiring a lot in Phase 2A Branch Creek Townhomes, that the same shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens (all hereinafter collectively referred to as the "Use Restrictions") relating to the use and occupancy thereof, said Use Restrictions are to be construed as covenants running with the land, which shall be binding on all parties having or acquiring any right, title or interest in Phase 2A Branch Creek Townhomes or any part thereof and which shall inure to the benefit of each owner thereof. Every person or other party hereafter acquiring any of the Lots in Phase 2A Branch Creek Townhomes, by acceptance of a deed or contract or other conveyance of any interest in or to Phase 2A Branch Creek Townhomes, whether or not it shall be so expressed in any such deed, contract for deed or other conveyance, and regardless of whether the same shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take such property interest subject to this Declaration and to the terms and conditions hereof and shall be deemed to have consented to same.

ARTICLE I
DEFINITIONS

The following are the definitions of the terms used in this Declaration:

Section 1.1 "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of Article V hereof.

Section 1.2 "Secondary Association" shall mean Branch Creek Phase 2A Townhome Association, Inc., its successors and assigns, which shall be created as a South Carolina nonprofit corporation.

Section 1.3 "Board" shall mean the Board of Directors of the Secondary Association.

Section 1.4 "Builder" shall mean True Homes, LLC, a Delaware limited liability company.

Section 1.5 "Committee" shall mean the Architectural Control Committee, which shall be appointed by the Board and have such duties as provided in Article VI, below.

Section 1.6 "Common Area(s)" shall mean any and all real property subject to this Declaration which is identified as "H.O.A.", "Common Area", "Common Elements", "Common Open Space," or "Open Space," or other similar wording, if any, on the plats, and shall also include the private right-of-way identified as "Private Drive".

Section 1.7 "Common Expenses" shall mean the actual and estimated cost to the Secondary Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Secondary Association for the benefit of the Common Areas or for the benefit of the Secondary Association.

Section 1.8 "Development Period" shall mean the period of time during which Declarant owns at least one (1) Lot.

Section 1.9 "Dwelling Unit" shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Real Estate, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

Section 1.10 "Easement Area" shall mean any portion of the Real Estate, which is subject to an easement as more particularly described in Article III, below.

Section 1.11 "Lot" or "Lots" shall mean any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site, or developed and improved for use as a single family residence identified by number on the Plats, whether attached or detached. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies.

Section 1.12 "Master Association" shall mean Branch Creek Owners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of South Carolina.

Section 1.13 "Master Declaration" shall mean the Declaration of Covenants and Restrictions for Branch Creek and Provisions for and By-Laws of the Branch Creek Owners Association, Inc. as recorded in Book 4647, Page 13 in the Office of the Register of Deeds for Dorchester County, as amended of record, and as may be further amended. The Real Estate shall be subject to both this Declaration and the Master Declaration.

Section 1.14 "Member" shall mean any person or entity holding membership in the Secondary Association.

Section 1.15 "Owner" shall mean the record owner, whether by one or more persons, of the fee simple title to any Lot in the Real Estate, but excluding those persons having such interest merely as security for the performance of an obligation.

Section 1.16 "Plat" or "Plats" shall refer to any recorded subdivision map of the Real Estate, including of any additional property added to the Real Estate pursuant to the provisions of Section 2.4 hereof.

Section 1.17 "Real Estate" shall mean all of the property subjected to this Declaration, known as Branch Creek Phase 2A Townhomes, being all of the real property shown on the plat of "Phase 2A-1, Branch Creek Townhomes" recorded in Map Book M at Page 10 in the Office of the Register of Deeds for Dorchester County.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND DEVELOPMENT OF THE REAL ESTATE

Section 2.1 Property Subject to this Declaration. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is the Real Estate located in the Town of Summerville, Dorchester County, South Carolina, more particularly described as Branch Creek Phase 2A Townhomes, being all of the real property shown on the plat of "Phase 2A-1, Branch Creek Townhomes" recorded in Map Book M at Page 10 in the Office of the Register of Deeds for Dorchester County (the "Real Estate").

Section 2.2 Development of the Real Estate. All Lots shall be and hereby are restricted exclusively to residential use and shall be subject to the standards and restrictions set forth in this Declaration. Declarant shall have the right, but not the obligation, during the Development Period, to submit additional real estate to or exclude any portion of the Real Estate from the provisions of this Declaration, and to make and maintain improvements, repairs and changes to any Common Area and all Lots owned by Declarant, including without limitation: (a) installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Declarant or of the Common Areas; (c) installation and maintenance of any water, sewer, and other utility systems and facilities; (d) installation of security or refuse systems; and (e) additions or changes to the boundaries of any Common Areas or Easement Areas.

Section 2.3 Intentionally omitted.

Section 2.4 Development of Additional Property. Declarant hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration, including but not limited to any portion of the property described in the deed to Declarant recorded in Book 8725 at Page 174 in the Office of the Register of Deeds for Dorchester County. This option may be exercised by Developer in accordance with the following rights, conditions, and limitations:

(a) Additional real estate may be added to the Real Estate at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Real Estate. No single exercise of Declarant's option to submit additional real estate to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other real estate.

(b) The option to add additional real estate may be exercised by Declarant by the execution of a Supplemental Declaration or Plat describing such additional real estate, which shall be filed in the public records of the county in which the Declaration was originally recorded, together with a legal description of the additional real estate. The provisions of this Declaration shall then be construed as embracing the real property described in the Supplemental Declaration and such additional real estate so submitted to the terms hereof, together with all improvements located thereon.

Section 2.5 Withdrawal of Property. Declarant hereby reserves the right and option during the Development Period, to be exercised in its sole discretion and without further approval by any party, to withdraw and remove any portion of the Real Estate then owned by Declarant from the control and provisions of this Declaration. Such removal by Declarant shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of the county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

ARTICLE III
PROPERTY RIGHTS AND EASEMENTS

Section 3.1 General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The Owners of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Declarant with respect to this Declaration and also for themselves, their heirs, personal representatives, successors and assigns. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of the Master Declaration and this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of

enjoyment in and to the Common Areas as established hereunder and membership in the Master Association and the Secondary Association. Each Owner shall automatically become a member of the Secondary Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Secondary Association shall automatically pass to his successor-in-title. Lots shall not be subdivided by Owners and the boundaries between Lots and between the Real Estate and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Declarant.

Section 3.2 Owner's Easement of Enjoyment. Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and subject to the following provisions:

- (a) The Right of the Secondary Association, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least eighty percent (80%) of the Members entitled to vote thereon, to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such encumbrance shall be subject to an easement in favor of such Lot for ingress and egress thereto.
- (b) The easements reserved elsewhere in this Declaration, in the Master Declaration, or in any Plat of all or any part of the Real Estate, and the right of the Secondary Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Secondary Association or the grantee of such easement.
- (c) The right of the Secondary Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, the Master Association, or other person, provided that any such transfer of the fee simple title must be approved (i) during the Development Period, by the Declarant; and (ii) after the Development Period, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least eighty percent (80%) of the Members entitled to vote thereon; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such dedication or transfer shall be subject to an easement in favor of such Lot for ingress and egress thereto.
- (d) The rights of the Master Association, the Secondary Association and Declarant reserved elsewhere in this Declaration or the Master Declaration or as provided in any Plat of all or any part of the Real Estate.
- (e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 3.3 Easements for Declarant.

(a) During the Development Period, Declarant shall have an easement for access to the Real Estate, including any Lot and all Common Areas, for the purpose of constructing structures and other improvements in and to the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of owners of the Real Estate.

(b) In addition to the easement set forth in Section 3.3 (a), Declarant hereby retains, reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through, and under the Utility Easement Areas, as such is defined in Section 3.4, below (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i); and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Declarant under this Section 3.3(b) shall be transferable by Declarant to any person or entity solely at the option and benefit of the Declarant, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. Declarant may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Declarant and others to whom Declarant may grant such similar or lesser easements, rights or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The Easements, rights and privileges reserved under this Section shall be for the exclusive benefit of Declarant, its successors and assigns and may not be impaired, limited or transferred, sold or granted to any person or entity by the Secondary Association or any of the Owners.

Section 3.4 Drainage, Utility and Sewer Easements.

(a) There is hereby reserved for the benefit of Declarant, the Secondary Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the

following providers and their respective successors and assigns, upon, over, under, and across (i) all of the Common Areas, specifically including, but not limited to, the Common Areas designated as "Private Drive", "Ex. 5" Cable Access Easement", "Ex. 20' Water Easement", "Ex. Bellsouth Easement", "New 4' Pedestrian/Sidewalk Esmt.", "Ex. 5' P.E.", "Ex. 5' G.U.E.", and "Exist. 20 SCPW Water Easement"; and (ii) those portions of all Lots designated on the Plat as "Utility Easement", "10' Utility Easement", "Private Drive", "Ex. 5" Cable Access Easement", "Ex. 20' Water Easement", "Ex. Bellsouth Easement", "New 4' Pedestrian/Sidewalk Esmt.", "Ex. 5' P.E.", "Ex. 5' G.U.E.", and "Exist. 20 SCPW Water Easement" or otherwise as easements for installing, replacing, repairing, and maintaining utility services (the "Utility Easement Areas"), including but not limited to those described in Section 3.3.

The Declarant, the Secondary Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Real Estate or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including but not limited to, master television antenna and/or cable systems, security and similar systems shall be made by Declarant in accordance with the rights reserved to Declarant under Section 3.3(b), above. To the extent possible, all utility lines and facilities serving the Real Estate and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Declarant hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Real Estate with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in and upon the Real Estate as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements and other easements in those areas designated on the Plat, which easements shall run in favor of Declarant and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for utility services

Section 3.5 Drainage Easements. There is hereby reserved an easement for the benefit of Declarant, the Secondary Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot

subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Declarant and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Declarant, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

Section 3.6 Intentionally omitted.

Section 3.7 Intentionally omitted.

Section 3.8 Medians and Entry Features: There may be landscaped medians and/or islands located within the Real Estate and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as Landscape Easements. These areas are created and reserved for installation and maintenance of landscaping and entry features such as but not limited to permanent walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Secondary Association as if such were a Common Area.

Section 3.9 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of Declarant, and its successors and assigns, and persons constructing improvements within the Real Estate, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas.

Section 3.10 Maintenance Easement. There is hereby reserved and created for the use of Declarant, the Secondary Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance for and within the Real Estate, provided that such easements shall not impose any duty or obligation upon Declarant or the Secondary Association to perform any such actions.

ARTICLE IV **ORGANIZATION AND DUTIES OF SECONDARY ASSOCIATION**

Section 4.1 Organization of Secondary Association. The Secondary Association shall be organized as a nonprofit corporation under the laws of the State of South Carolina, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Declarant, and the By-Laws of the Secondary Association, attached hereto as Exhibit A and as amended from time to time.

Section 4.2 Voting Rights. The membership of the Secondary Association shall consist of two (2) classes of membership with the following rights:

(a) Class A Membership. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot owned by such Member with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. In the event that any Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, each shall be a Member but they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Class A Members, only one (1) vote is cast for each Lot.

(b) Class B Membership. Class B Members shall be the Declarant and Builder. Each Class B Member shall be entitled to ten (10) votes for each Lot of which it is the Owner with respect to each matter submitted to a vote of the Association. The Class B Membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the Association; or (ii) at such time as the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership.

Notwithstanding anything herein to the contrary, during the Development Period all actions of the Secondary Association shall require the prior written approval of the Declarant.

Section 4.3 General Duties of the Secondary Association. The Secondary Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the maintenance of the exterior of the townhome buildings and party walls, the determination of Common Expenses, and the collection of annual and special Assessments. The Secondary Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Secondary Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

(a) *Common Area Maintenance by Secondary Association.* The Secondary Association shall maintain and keep in good repair the Common Areas. The maintenance shall include, but need not be limited to, maintenance, repair and replacement of all landscaping and other flora, structures, play equipment, and improvements, including all private streets situated upon the Common Areas, ponds, landscaping easements along the primary roads through the Real Estate, medians and rights of ways of streets within the Real Estate, entry features for the Real Estate, outdoor lighting, and such portions of any other real property included within the Common Areas as may be provided in this Declaration. The Secondary Association may enter into contracts or agreements to provide such maintenance with any other person or entity, including the Master Association.

(b) *Exterior Maintenance of Attached Dwelling Units.* In addition to maintenance of the Common Area, the Secondary Association shall provide exterior maintenance upon each attached Dwelling Unit which is subject to assessment hereunder, as follows: paint and/or stain the exterior of the buildings and townhouses; repair, replace and care for roofs, exterior building surfaces (including but not limited to siding, trim, and windows), trees,

shrubs and other landscaping (excluding vegetation planted by an Owner), grass, walks, mailboxes, fences installed by Declarant or the Secondary Association, exterior lights, and other exterior improvements. Further, the Owner of any Lot may, at his or her election, plant flowers in the front and rear beds, if any, established by Declarant in developing the Lot or later established by the Secondary Association, provided that such landscaping or maintenance by the Owner does not hinder the Secondary Association in performing maintenance of the exterior of the building, townhomes and remaining yard spaces. No maintenance by a Lot Owner shall reduce the assessment payable by him to the Secondary Association. The Owner shall not plant any vegetation, excepting only flowers in any front or rear planting beds as may be established by the Declarant or the Secondary Association, except with the prior written approval of the Secondary Association. The Secondary Association may enter into contracts or agreements to provide such maintenance with any other person or entity, including the Master Association.

Due to differing amounts of exposure to the elements and other factors, the exterior of some Dwelling Units may require more maintenance than others. It being in the best interest of the entire Secondary Association that the exterior of all Units be properly maintained, the Secondary Association shall be required to provide the maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each Dwelling Unit or Lot.

In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment for that Owner's Lot.

(c) *Party Walls.*

- i. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Real Estate and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces within the Dwelling Units.
- ii. 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 proportion to such use.
- iii. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, 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.

- iv. Weatherproofing. Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- v. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- vi. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Section 4.3(c), each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

(d) *Television, Cable and Internet Service*. The Secondary Association may provide one or more central antennas or satellite receivers for the convenience and use of some or all of the Members and/or supply, contract or otherwise make provision for cable television and internet service to be provided to all of the Lots, and in such event, the cost of these may be included in the Assessments provided for in Article V.

(e) *Maintenance by Owners*. Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his or her Lot and Dwelling Unit, including any part of the Dwelling Unit inside the wall studs, and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling Unit in a manner consistent with all applicable covenants.

(f) *Secondary Association's Remedies if Owner Fails to Maintain Lot*. In the event that Declarant or the Secondary Association determines that: (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair, or replacement of items which are his responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Secondary Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Declarant or the Secondary Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Secondary Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provision hereof after such notice, Declarant or the Secondary 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 (together with the cost of attorneys fees, if any, in the enforcement of the Owner's obligations and collection of the charge to the Owner) shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual

Owner's responsibility) and such cost shall become a part of the costs of the Secondary Association (until such time as reimbursement is received from the individual Lot Owner). In the event that the Declarant undertakes such maintenance, cleaning, repair or replacement, the Secondary Association shall promptly reimburse the Declarant for the Declarant's costs and expenses, including reasonable attorneys' fees and filing fees.

Section 4.4 Insurance.

(a) Association Coverage. Insurance coverage on the Real Estate shall be governed by the following provisions:

- i. Ownership of Policies. All insurance policies upon the Real Estate shall be purchased by the Secondary Association for the benefit of all the Secondary Association and the Owners and their mortgagees as their interest(s) may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Owners. Owners shall be solely responsible for obtaining insurance coverage at their own expense upon the interior walls of their Dwelling Units (inside the wall studs, including dry wall), their own personal property, and for their personal liability and living expense and such other coverage as they may desire.
- ii. Coverage. All buildings and improvements upon the Real Estate and all personal property of the Secondary Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:
 - A. Loss or Damage by fire or other hazards covered by a standard extended coverage endorsement;
 - B. Such other risks as from time to time shall be customarily covered with respect to buildings on the Real Estate; and
 - C. Such policies shall contain clauses providing for waiver of subrogation.
- iii. Liability. Public liability insurance shall be secured by the Secondary Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Secondary Association may determine from time to time to be desirable and necessary.
- iv. Premiums. Premiums for insurance policies purchased by the Secondary Association shall be paid by the Secondary Association and shall be included as part of the annual assessment described in Article V below.

v. Proceeds. All insurance policies purchased by the Secondary Association shall be for the benefit of the Secondary Association and the Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Secondary Association as insurance trustees under this Declaration. The sole duty of the Secondary Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

A. Proceeds on account of damage to Common Areas and facilities held for the Secondary Association.

B. Proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Secondary Association.

C. In the event a mortgage endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(b) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

i. Expense of the Trust. All expenses of the insurance trustees shall be first paid or provisions made therefore.

ii. Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

(c) Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

Section 4.6 Condemnation or Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Secondary Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Secondary Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Secondary

Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Secondary Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

Section 4.7 Transfer of Control of Secondary Association. Declarant shall transfer control of the Secondary Association to the Members as soon as is practical upon the termination of the Class B Membership, as described in Section 4.2 above.

Section 4.8 Interim Advisory Committee. Declarant may, in its sole discretion, establish and maintain until such time as Declarant shall transfer control of the Secondary Association pursuant to Section 4.7 hereof, an Interim Advisory Committee (the "Advisory Committee"). If established: (a) The Advisory Committee shall serve as a liaison between the Owners (other than the Declarant) and the Secondary Association, and advise the Secondary Association from time to time during such period; (b) The Advisory Committee shall consist of three (3) members, each of whom must be an Owner (other than Declarant, or an officer, director or employee of Declarant); (c) The members of the Advisory Committee shall serve without compensation. The Advisory Committee shall be elected for a term of one (1) year by the Owners (other than Declarant) at a meeting thereof called for such purpose; and (d) The Owners (other than Declarant) may remove any member of the Advisory Committee with or without cause, and elect a successor at a meeting thereof called for such purpose.

Section 4.9 Mortgagees' Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefore from the Secondary Association. In addition, neither the Owners nor the Secondary Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

ARTICLE V ASSESSMENTS

Section 5.1 Purpose of Assessments. The Assessments levied by the Secondary Association shall be used exclusively for the purpose of preserving the values of the Lots within the Real Estate and promoting the health, safety, and welfare of the Owners, users, and occupants of the Real Estate and, in particular, for the Secondary Association's obligations relating to the improvement, repairing, operating, and maintenance of the exterior of the Dwelling Units and the Lots, party walls, and Common Areas, including, but not limited to, the payment of insurance thereon, the payment of taxes on the Common Areas, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Secondary Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Declarant and Builder) hereby covenants and agrees to pay to the Secondary Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Lots owned by Builder shall be assessed in an amount equal to 25% of the Assessments during any period that Builder owns a Lot or Lots. This is reasonable and equitable under the circumstances, as Lot(s) owned by Builder are likely to be vacant, and as such would not generate the same maintenance burden as occupied Lots. No Owner other than Builder shall be entitled to a reduced rate of dues, regardless of whether the Lot owned by that Owner is vacant or not.

Lots owned by the Declarant or its assigns shall not be assessed; however, Declarant or its assigns shall be responsible for any shortfall in HOA revenues.

Section 5.2 Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Declarant and shall constitute a lien from and after the due date thereof in favor of the Secondary Association upon each such Lot. The lien for Assessments shall be subordinate to the lien of any first mortgage on a Lot. An Owner's failure to pay any Assessment shall not, by the terms of this Declaration, constitute a default under a federally insured mortgage on such Lot. Mortgagees shall not be required to collect any Assessment. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 5.3 Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Real Estate ("Pro-rata Share").

Section 5.4 Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Secondary Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Secondary Association. Such budget shall serve as the basis for establishing the annual assessments.

Section 5.5 Capital Contributions. Every Owner other than Declarant and Builder shall be responsible for an initial capital contribution in the amount of Two Hundred Fifty Dollars (\$250.00), due and payable to the Secondary Association upon every transfer of the title of a Lot to a new Owner.

Section 5.6 Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

Section 5.7 Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Secondary Association shall be established by the Secondary Association and may be changed from time to time by action of the Secondary Association. The liability of an Owner, other than Declarant, for Assessments under this Article V shall commence as of the date such Owner acquires his interest in a Lot. The first annual Assessment shall be made for the balance of the Secondary Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Secondary Association. Annual Assessments shall be due and payable in full as of the above date, except that the Secondary Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 5.8 Duties of the Secondary Association Regarding Assessments.

(a) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Secondary Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Secondary Association. The Board shall cause written notice of all Assessments levied by the Secondary Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(b) The Secondary Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Secondary Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Secondary Association may assess an administrative fee for such certificate, not to exceed the maximum amount permitted by South Carolina law.

(c) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

Section 5.9 Non-payment of Assessments; Remedies of Secondary Association.

(a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in subparagraph (b) hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest at the rate of eighteen percent (18%) per annum or the maximum amount permitted by South Carolina law until paid in full. In addition to such interest, the Secondary Association shall assess a late fee, as from time to time determined by the Board of Directors of the Secondary Association. The Secondary Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Secondary Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, late fees, costs, and attorneys' fees.

Section 5.10 Adjustments. In the event that the amounts actually expended by the Secondary Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Secondary Association.

Section 5.10 Budget Deficits during Development Period. During the Development Period, Declarant shall advance funds to the Secondary Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital and other reserves) and the annual and special and specific assessments for such fiscal year.

Section 5.10 Failure to Assess. The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was

made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Secondary Association.

ARTICLE VI
ARCHITECTURAL STANDARDS AND REQUIREMENTS

Section 6.1 Purpose. In order to preserve the natural setting and beauty of the Real Estate, to establish and preserve a harmonious and aesthetically pleasing design for the Real Estate, and to protect and promote the value of the Real Estate, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article VI and in Article VII. Notwithstanding the foregoing, neither this Article nor Article VII shall apply to the activities of the Declarant or Builder during the Development Period, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Secondary Association. The Board shall have the authority and standing, on behalf of the Secondary Association, to enforce in courts of competent jurisdiction decisions of the Committee.

Section 6.2 Architectural Control Committee. The Board shall establish an Architectural Control Committee to consist of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the Committee may include persons who are not Members of the Secondary Association. Members of the Committee may or may not be members of the Board. During the Development Period, the Declarant shall have all of the powers and authority of the Committee.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Secondary Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a Chairman and Vice Chairman and he, or in his absence, the Vice-Chairman, shall be presiding officer at its meetings. The Committee shall meet at least once in each calendar month, as well as upon call of the Chairman, and all meetings shall be held at such places as may be designated by the Chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto. The Board or the Committee may promulgate guidelines containing additional architectural standards for the Real Estate. In addition to such standards, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. The Committee shall endeavor to approve or to disapprove such plans or to request

additional information within thirty (30) days after submission of completed plans, proposals, specifications or drawings. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired.

Section 6.3 No Waiver of Future Approvals. The approval by the Committee of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 6.4 Architectural Approval. To preserve the architectural and aesthetic appearance of the Real Estate, no construction of improvements of any nature whatsoever with the exception of vegetative landscaping shall be commenced or maintained by an Owner, other than the Declarant or Builder, with respect to the construction or affecting the exterior appearance of any Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alteration therein be made (excluding repainting in the original color but otherwise including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved".

(a) *Power of Disapproval.* The Committee may refuse to grant permission to construct, place or make the requested improvement, when: (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the restrictions contained in this Declaration; (ii) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Real Estate in general; (iii) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners; and/or (iv) The Committee is otherwise authorized to disapprove the requested improvement in this Declaration.

(b) *Powers Following Approval.* Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which

construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Committee shall determine that such plans and specification have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

Section 6.5 Non-Vegetative Landscaping Approval. To preserve the aesthetic appearance of the Real Estate, no material modification to the grading, excavation, or filling of any Lot shall be implemented by an Owner, unless and until the plans therefore have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to approvals required under this Section.

Section 6.6 Approval Not a Guarantee. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Declarant, the Secondary Association, nor the Committee shall be responsible or liable for: (a) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VI; (b) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (c) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (d) any defects in construction undertaken pursuant to such plans and specifications.

Section 6.7 Building Restrictions. All improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, and obtain such authorizations and permits as are required thereunder, and further, shall receive the prior written approval of the Committee.

ARTICLE VII **USE RESTRICTIONS**

The Secondary Association, acting through its Board, shall have the authority to make and to enforce standards and restrictions governing the use of the Real Estate, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Secondary Association by a majority of Members entitled to vote thereon subject to the prior written consent of the Declarant during the Development Period.

Reference is herein made to the Declaration of Covenants and Restrictions for Branch Creek and Provisions for and By-Laws of the Branch Creek Owners Association, Inc., recorded in Record Volume 4647 at Page 13 in the Office of the Register of Deeds for Dorchester County, S.C., to which all Property of Phase 2A Branch Creek Townhomes shall be subject (hereinafter the

"Master Declaration"). Members of the Secondary Association shall also be members of the Master Association for Branch Creek, and therefore subject to the restrictions, provisions, and covenants of the Master Declaration as well as this Declaration. Notwithstanding the right and authority of the Master Association to enforce any of the provisions of the Master Declaration, this Declaration shall additionally reserve unto the Secondary Association the right, but not the obligation, to enforce, in its discretion, any or all of those certain Use Restrictions set forth in Article VI of the Master Declaration, and in such event, the Board of Directors of the Secondary Association shall have thereto powers of enforcement being the same as provided for violations of those separate use restrictions set forth in this Article VII.

Section 7.1 Use of Lots. Except as permitted by Sections 7.24 and 7.31 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Dwelling Unit as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 7.24 below. No building or structure shall be located on any Lot outside of the setback lines designated on the Plats or as designated by the county or municipal zoning authorities.

Section 7.2 Awnings and Window Screens. No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes nor shall any window-mounted heating or air conditioning units be permitted. No metal, fiberglass or similar type awnings or patio covers shall be permitted. Permanent clotheslines will not be approved. Clothing, rugs, or other items which are visible to others in the Real Estate shall not be hung on any railing, fence, hedge, or wall.

Section 7.3 Signs. No signs of any kind shall be erected within the Real Estate, or permitted within any windows, without the written consent of the Board, except for such signs as may be required by legal proceedings and except for a single standard real estate "for sale" or "for rent" sign may exist on a Lot if such does not exceed six (6) square feet in area. Declarant or Builder may use such signs as it deems necessary or appropriate during the Development Period. No business signs, flags(except as allowed under Section 7.20), banners or similar items except those placed and used by Declarant advertising or providing directional information shall be erected by any Owner. If permission is granted to any Person to erect a sign, including name and address signs within the Real Estate, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate. However, nothing in this Declaration shall regulate or prohibit an Owner from displaying on the Owner's Lot the flag of the United States or South Carolina, so long as the said flag is no greater than four feet by six feet and is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. 5-10, as amended, governing the display and use of the flag of the United States. Further, nothing in this Declaration shall regulate or prohibit an owner from displaying on the Owner's Lot a political sign (as defined in N.C.G.S. 47F-121), provided said sign is displayed not more than 45 days before the day of the election or more than seven days after the day of the election.

Section 7.4 Parking and Prohibited Vehicles.

(a) *Parking.* Ownership of each Lot shall entitle the Owner to the use of that respective Dwelling Unit's garage and the appurtenant driveway extending from the street to the garage, if any, together with the right of ingress and egress in and upon said parking areas. The Secondary Association may assign and/or designate any additional vehicle parking

spaces on the Property for each Dwelling Unit and/or as visitor or short-term parking. No motor vehicle, whether or not utilized by an Owner, shall be parked on any street or public right-of-way, except in areas specifically designated by the Association for such purposes. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed.

No Owners or other occupants of any portion of the Real Estate shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) *Prohibited Vehicles.* Commercial vehicles primarily used or designed for commercial purposes, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed at the expense of the Owner. Further, "commercial vehicles" shall be defined herein as vehicles weighing more than one (1) ton and having more than two (2) axles.

Section 7.5 Animals and Pets. No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in the Real Estate. All pets shall remain under the control and supervision of an adult Owner, and shall not be permitted off of such Owner's respective Lot unless on a leash or other restraint. The owner of any pet shall be responsible to clean up or repair any waste or damage caused by such pet, and assure that such pet does not create any unreasonable disturbance.

Section 7.6 Quiet Enjoyment. No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Real Estate. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Real Estate. The Declarant or the Secondary Association may order the relocation of any wood piles which are unsightly. No horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Real Estate.

Section 7.7 Unsightly or Unkempt Conditions; Lawn Care; Dumping. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Real Estate. Nothing which

would result in a cancellation of any insurance for any portion of the Real Estate, or which would be in violation of any law or governmental code or regulation shall be permitted in the Real Estate. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Real Estate shall be liable to the Secondary Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 7.8 Antennas, Aerials and Satellite Dishes.

(a) *Intent.* It is the intent and desire of Declarant that the Real Estate be developed in an aesthetically pleasant manner, and that the residences constructed on the Lots retain a harmonious and consistent appearance. To this end, it is the goal of the provisions of this Section 7.8 to limit the installation of any satellite dishes, antennas and aerials on the Lots so that such are not visible from the street in front of such Lot.

(b) *Permitted Installation and Standards.* A "Satellite Dish" or "Antenna," as such terms are defined below, shall be permitted to be installed by an Owner without the approval of the Declarant or the Secondary Association *provided* the location of the Satellite Dish or Antenna, and all related cables and wiring, are installed at the least visible location on such Owner's Lot, as viewed from the street directly in front of such Lot, which will not result in a substantial degradation of reception. Within twenty (20) days from the installation of a Satellite Dish or Antenna, an Owner shall notify the Secondary Association of such installation. Such notice shall indicate the item installed, the approximate location on such Lot, and that such installation meets the standards contained in this subsection (b).

(c) *Rights of Secondary Association and Declarant.* The Secondary Association and Declarant shall have the right to enter upon a Lot on which a Satellite Dish or Antenna is installed in order to (i) confirm that the Satellite Dish or Antenna, as the case may be, was installed in accordance with the standard specified in Section 7.8(b), above; or (ii) install, at the expense of the Secondary Association or the Declarant, as the case may be, landscaping, fencing, or a combination thereof, so as to shield or otherwise block the view of such Satellite Dish or Antenna from the street in front of such Lot. In the event the installation does not meet the standard specified in Section 7.8(b), above, the Secondary Association may require the relocation of the Satellite Dish or Antenna by the Owner, at the Owner's expense, to another location which meets such standard. In addition, the Secondary Association shall have the right to require the Owner, at the Owner's expense, to paint the Satellite Dish or Antenna (provided that such painting does not impair the reception thereof) to match the background of the installation area.

(d) *Definitions of Satellite Dish and Antenna.* For purposes of this Section 7.8, the terms "Satellite Dish" and "Antenna" shall mean any satellite dish or antenna that is subject to the Telecommunications Act of 1996, as amended, and any applicable regulations issued thereunder (collectively, the "Telecom Act").

(e) *Reception Devices not Governed by the Telecom Act.* Any antennas, aerials, satellite dishes, or other apparatus not subject to the Telecom Act shall be permitted on a Lot only if: (i) concealed by landscaping, fencing, or a combination thereof; (ii) installed so as not to be visible

from the street in front of such Lot, front elevation street view; and (iii) not constitute a nuisance to any other Owner. All installations under this subsection (e) shall be first approved by the Secondary Association.

(f) Miscellaneous. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Real Estate, provided however that the Declarant and/or the Secondary Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Real Estate, should any such master system or systems be utilized by the Secondary Association and require any such exterior apparatus.

Section 7.9 Garbage Cans, Tanks, Etc. No storage tanks of any kind shall be allowed upon a Lot. No rubbish, trash or garbage containers shall be stored or maintained outdoors except those distributed by the entity that collects trash for the Real Estate and such containers must be stored in a contained area (fenced yard or garage) not visible from any street. Such containers must be removed from the curb within 24 hours of the trash pick-up day and stored behind the Dwelling Unit.

Section 7.10 Pools. No swimming pools, spas or hot tubs shall be erected, constructed or installed on any Lot.

Section 7.11 Storage Sheds and Temporary Structures. Except as may be utilized by Declarant or Builder during the Development Period, no tent, shack, trailer, storage shed, mini-barn or other similar detached structure shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or the Declarant and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours.

Section 7.12 Drainage, Water Wells and Septic Systems.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than the Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot.

Section 7.13 Traffic Regulation and Sight Distance at Intersections. All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Real Estate shall be subject to the provisions of the laws of the State of South Carolina, and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Secondary Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Real Estate. The Secondary Association shall be entitled to

enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of South Carolina or by any other state in the United States may operate any type of motor vehicle within the Real Estate. All vehicles of any kind and nature which are operated on the streets in the Real Estate shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Real Estate.

Section 7.14 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Real Estate, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

Section 7.15 Air Conditioning Units. Except as may be permitted by the Board, no window air conditioning units may be installed in any Lot.

Section 7.16 Mailboxes. Mailboxes must be uniform and are chosen and maintained by the Secondary Association.

Section 7.17 Solar Panels. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot without prior written approval of the Committee. Solar panels visible by a person on the ground shall not be permitted:

- (a) On the façade of a structure that faces areas open to common or public access;
- (b) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or
- (c) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

Section 7.18 Intentionally omitted.

Section 7.19 Intentionally omitted.

Section 7.20 Exterior Flags and Sculpture. Exterior sculptures, fountains, flags, and similar items must be approved by the Committee.

Section 7.21 Intentionally omitted.

Section 7.22 Wetlands, Lakes and Water Bodies. All wetlands, Lakes, ponds, and streams within the Real Estate, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation, fishing, swimming, boating, playing or use of personal flotation devices, shall be permitted. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of wetlands, Lakes, ponds or streams within the Real Estate.

Section 7.23 Fences. No fencing shall be installed on any Lot without the prior review and approval of the Committee. The Committee shall have approval on all aspects of any proposed fencing, including but not limited to size, location, height and composition. Fencing guidelines are as follows:

(a) General Guidelines: The following guidelines are applicable to all Lots within the Real Estate:

(i) **Approvals.** Any fencing shall be subject to the prior approval of the Committee.

(ii) **Fencing Types and Materials.** All fencing shall be constructed of white vinyl and shall be uniform with other fences in the Real Estate. The Committee reserves the right to approve certain fence types on perimeter and highly visible lots within the community (See section (d) (ii) below). A brochure showing an example of fencing to be installed must be included with the application to the Committee.

(iii) **Fencing Colors.** Fencing shall be white and must be uniform for an entire fence and maintained in good condition.

(iv) **Fencing Height.** Fencing shall be six (6) feet in height.

(v) **Use of Professional Installer.** A professional fencing contractor must be hired by the Owner, at such Owner's cost, to install approved fencing for such Owner.

(vi) **Declarant Installed Fencing.** No fencing shall connect to or otherwise interfere with any fencing originally installed by the Declarant. Any fencing installed by Declarant shall not be subject to these standards.

(vii) **Landscape Easements.** Except as installed by Declarant or the Secondary Association, no improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon Landscape Easements.

(viii) **Fencing within Easements:** Fencing which is installed within any easement affecting a Lot shall be subject to the risk of removal without notice by the Secondary Association or any other entity or entities which have access rights to the easement area(s) if any work or repairs are to be done within the easement area(s). The Owner of such Lot shall be responsible for any and all costs relating to the removal of such fencing and for the subsequent replacement of any approved replacement fencing.

In addition, fencing must not impede surface drainage and must be installed to be a minimum of three (3) inches off the ground (fence posts must not obstruct any drainage, i.e. rear swale).

(b) Location of Fencing on Conventional Lots: In addition to the guidelines under other subsections herein, the following guidelines are applicable to all Lots within the Real Estate:

(i) Fencing shall not extend forward beyond the rear plane of the Dwelling Unit;
and

- (ii) Fencing on any Lot shall be at least five (5) feet from the sidewalk, if any.

NOTE: *In addition to the above restrictions and standards, the applicable municipality may have restrictions and ordinances that may affect, limit or otherwise restrict or prohibit an improvement to a Lot, including fencing. Approval of any improvement by the Committee does not guarantee that such improvement is not subject to any other governmental approval. There may be instances where a change is approved through the Committee but may not be allowed through the municipality (or vice versa). An Owner must check with the municipality and obtain any permits or approvals that may be required.*

Section 7.24 Business Uses. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any commercial property within the Real Estate nor shall it apply to any activity conducted by the Declarant or Builder with respect to its development and sale of the Real Estate or its use of any Lots or Dwelling Units which it owns within the Real Estate.

Section 7.25 Basketball Goals. No basketball goals shall be permitted on any lot without the prior review and approval of the Architectural Control Committee of the Secondary Association. No basketball goals shall be permitted to be used in the front yard, along any curb or in any street of the Community.

Section 7.26 Playground Equipment. No playground equipment shall be installed on any lot without the prior review and approval of the Architectural Control Committee of the Secondary Association. All such equipment shall be located only within a fenced area of a Lot (being the portion of such Lot behind the rear corners of the Dwelling Unit on such Lot).

Section 7.27 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or

equipment, and the Secondary Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 7.28 Contiguous Lots. Whenever two or more contiguous Lots shall be owned by the same Owner, such Owner shall not be permitted to use two or more of said Lots as a site for a single dwelling. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to the Assessments.

Section 7.29 Control and Common Areas.

(a) *Control by the Secondary Association.* As part of its general duties, the Secondary Association shall regulate the Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the Common Areas by any Owner, nor shall the lakes or streams, if any, or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.

(b) *Restrictions of Use of Common Areas.* The following covenants and restrictions on the use and enjoyment of the Lots and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plats and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Secondary Association. Present or future Owners or the Secondary Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(i) No one other than Owners who are Members in good standing with the Secondary Association, or such an Owner's occupant, tenants, guests or invitees, may use the Common Areas.

(ii) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Common Areas.

(iii) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or the Properties or other persons entitled to use the same and to use and enjoy the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas.

(iv) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Common Areas, except with express permission from the Committee.

- (v) The Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Section 7.30 Laws and Ordinances. Every Owner and occupant of any Lot or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action enforce such laws, statutes, ordinances and rules.

Section 7.31 Sales and Construction. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Builder and the Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots, Dwelling Units and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses, all as may be approved by the Declarant from time to time, provided that the location of any construction trailer of any assignees of the Declarant's rights under this Section 7.31 shall be subject to the Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwelling Units as model residences, and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

Section 7.32 Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

Section 7.33 Intentionally omitted.

Section 7.34 Intentionally omitted.

Section 7.35 Garages. Dwelling Units which have garages shall have doors and when not in use, garage doors are to be left in the closed position.

Section 7.36 Doors. All storm doors and screen doors of a Dwelling Unit are subject to architectural review by the Committee.

ARTICLE VIII **RULEMAKING AND REMEDIES FOR ENFORCEMENT**

Section 8.1 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the

amendments thereto shall be furnished by the Secondary Association to all Members prior to the effective date upon the Owners, their families, tenants guests, invitees, servants and agents, until and unless any such rule or regulations be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Secondary Association by a majority of the Members as set forth in the By-Laws, subject to Declarant's consent during the Development Period.

Section 8.2 Authority and Enforcement.

(a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Secondary Association shall have the power, after fifteen (15) days written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Secondary Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or the occupant who is guilty of such violation; (ii) to suspend an Owner's right to vote in the Secondary Association; and (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use any of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions: Such sanctions are in addition to the Secondary Association's remedies under Section 4.2, above, relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation and By-Laws of the Secondary Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by the Declarant, the Secondary Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations; declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Declarant, the Secondary Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either the Declarant or the Secondary Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

ARTICLE IX **GENERAL PROVISIONS**

Section 9.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Secondary Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than seventy-five percent (75%) of the then Owners has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

Section 9.2 Amendment. Prior to the conveyance of the first Lot to an Owner, the Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination, or to otherwise comply with any other governmental order or request; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwellings; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Department of Housing and Urban Development, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Real Estate as provided herein; (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (a) through (f) of this Section 9.2 shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, the Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least sixty-seven percent (67%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the County in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of the Declarant or the assignee of such right or privilege.

Section 9.3 Indemnification. The Secondary Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the

then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Secondary Association and the Secondary Association shall indemnify and forever hold each such officer, director and committee member 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, director, or committee member or former officer, director, or committee member may be entitled. The Secondary Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9.4 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Declarant or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes, which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

Section 9.5 Right of Entry. The Secondary Association, and during the Development Period the Declarant, shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Secondary Association rules, which right may be exercised by the Secondary Association's Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Secondary Association to enter a Lot and Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 9.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by South Carolina law.

Section 9.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Secondary Association unless approved by a vote representing at least two-thirds (2/3) of the Members entitled to vote thereon. However, this Section shall not apply to (a) actions brought by the Secondary Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) actions brought for collection of

assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Secondary Association in proceedings instituted against it. .

Section 9.8 Intentionally omitted.

Section 9.9 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 9.10 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 9.11 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Declarant, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of the Declarant and the Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

Section 9.12 Assignment. Declarant shall have the right to assign its rights and obligations under this Declaration to any third party.

[Signature Appears on a Subsequent Page]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed the day and year first above written by its authorized 12/15/2013 Manager, this

FILED/RECORDED
December 31, 2013
DORCHESTER COUNTY
REGISTER OF DEEDS

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Declarant:

Witnesses:

Silent G, LLC,
a North Carolina limited liability company

[Handwritten Signature]
[Handwritten Signature]

By: [Handwritten Signature]
Its: Manager

STATE OF NORTH CAROLINA)
COUNTY OF UNION)

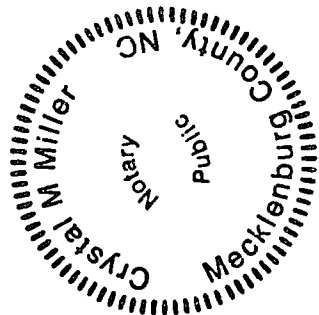
ACKNOWLEDGEMENT
under SC Code '30-5-30(C)

I Crystal M. Miller, a notary public, do hereby certify that SILENT G, LLC, a North Carolina limited liability company, by Jeff Cargnel, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

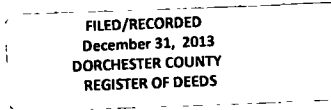
Witness my hand and official seal this the 15 day of December, 2013.

(SEAL)

[Handwritten Signature]
Notary Public for North Carolina
My Commission Expires: 6-6-17



IN WITNESS WHEREOF, True has caused this Declaration to be executed the day and year first above written by its authorized manager.



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Property Owner:

Witnesses:

True Homes, LLC,
a Delaware limited liability company

[Signature]
[Signature]

By: [Signature]
Mark W Boyce
Its: Manager

STATE OF NORTH CAROLINA)

ACKNOWLEDGEMENT
under SC Code '30-5-30(C)

COUNTY OF UNION)

I Crystal M. Miller, a notary public, do hereby certify that TRUE HOMES, LLC, a Delaware limited liability company, by Mark W. Boyce, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15 day of December, 2013.

(SEAL)

Crystal Miller
Notary Public for North Carolina
My Commission Expires: 6-6-17

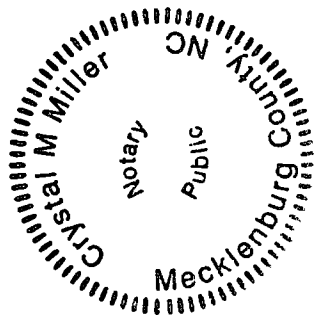


EXHIBIT A

BY-LAWS

OF

BRANCH CREEK PHASE 2A TOWNHOME ASSOCIATION

BY-LAWS
OF

BRANCH CREEK PHASE 2A TOWNHOME ASSOCIATION

ARTICLE I
OFFICES

- Section 1.** Principal Office. The principal office of the association shall be located at such place as the Board of Directors may fix from time to time.
- Section 2.** Registered Office. The registered office of the association required by law to be maintained in the State of South Carolina may be, but need not be, identical with the principal office.
- Section 3.** Other offices. The association may have offices at such other places, either within or without the State of South Carolina, as the Board of Directors may designate or as the affairs of the association may require from time to time.

ARTICLE II
MEETINGS OF MEMBERS

- Section 1.** Place of meetings. All meetings of members shall be held at the principal office of the association, or at such other place, either within or without the State of South Carolina, as shall in each case be (i) fixed by the President, the Secretary, or the Board of Directors and designated in the notice of the meeting or (ii) agreed upon by a majority of the members entitled to vote at the meeting.
- Section 2.** Annual meetings. The annual meeting of members shall be held at Ten o'clock A.M. on the second Friday in October of each year for the purpose of electing directors of the association and for the transaction of such other business as may be properly brought before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.
- Section 3.** Substitute annual meeting. If the annual meeting shall not be held on the day designated by these By-Laws, a substitute annual meeting may be called in accordance with the provisions of Section 4 of this Article II. A meeting so called shall be designated and treated for all purposes as the annual meeting.
- Section 4.** Special meetings. Special meetings of the members may be called at any time by the President, the Secretary, or the Board of Directors, and shall be called pursuant to the written request of the holders of not less than one-tenth of all the votes entitled to be cast on any issue proposed to be considered at the meeting.

Section 5. Notice of meetings. Written notice stating the date, time, and place of the meeting shall be given not less than ten nor more than sixty days before the date of any members' meeting, either by personal delivery, or by telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission or by mail or private carrier, by or at the direction of the Board of Directors, the President, the Secretary, or other person calling the meeting, to each membership interests holder entitled to vote at such meeting; provided that such notice must be given to all members with respect to any meeting at which a merger or membership interests exchange is to be considered and in such other instances as required by law. If mailed, such notice shall be deemed to be effective when deposited in the United States mail, correctly addressed to the membership interest holder at the membership interest holder's address as it appears on the current record of the members of the association, with postage thereon prepaid.

In the case of a special meeting, the notice of meeting shall include a description of the purpose or purposes for which the meeting is called; but, in the case of an annual or substitute annual meeting, the notice of meeting need not include a description of the purpose or purposes for which the meeting is called unless such a description is required by the provisions of the South Carolina Business Association Act.

When a meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time, or place is announced at the meeting before the adjournment and if a new record date is not fixed for the adjourned meeting; but if a new record date is fixed for the adjourned meeting (which must be done if the new date is more than 120 days after the date of the original meeting), notice of the adjourned meeting must be given as provided in this section to persons who are members as of the new record date.

Section 6. Waiver of notice. Any membership interest holder may waive notice of any meeting before or after the meeting. The waiver must be in writing, signed by the membership interests holder, and delivered to the association for inclusion in the minutes or filing with the corporate records. A membership interests holder's attendance, in person or by proxy, at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the membership interests holder or his proxy at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the membership interest holder or his proxy objects to considering the matter before it is voted upon.

Section 7. Members' list. Upon request by any membership interest holder before each meeting of members, the Secretary of the association shall prepare an alphabetical list of the members entitled to notice of such meeting. The list shall be arranged by voting group (and within each voting group by class or series of membership interests) and show the address of and number of membership interests held by each membership interest holder. The list shall be kept on file at the principal office of the association, or at a place identified in the meeting notice in the city where the meeting will be held, for the period beginning two business days after notice of the meeting is given and continuing through the meeting, and shall be available for inspection by any membership interests holder, his agent or attorney, at any time during regular business hours. The list shall also be available at the meeting and shall be subject to inspection by any membership interest holder, his agent or attorney, at any time during the meeting or any adjournment thereof.

Section 8. Quorum. Membership interests entitled to vote as a separate voting group may take action on a matter at the meeting only if a quorum of those membership interests exists. A majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

Once a membership interests is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

In the absence of a quorum at the opening of any meeting of members, such meeting may be adjourned from time to time by the vote of a majority of the votes cast on the motion to adjourn; and, subject to the provisions of Section 5 of this Article II, at any adjourned meeting any business may be transacted that might have been transacted at the original meeting if a quorum exists with respect to the matter proposed.

Section 9. Proxies. Membership interests may be voted either in person or by one or more proxies authorized by a written appointment of proxy signed by the membership interest holder or by his duly authorized attorney in fact. An appointment of proxy is valid for eleven months from the date of its execution, unless a different period is expressly provided in the appointment form.

Section 10. Voting of membership interests. Subject to the provisions of the Articles of Incorporation, each outstanding membership interests shall be entitled to one vote on each matter voted on at a meeting of members.

Except in the election of directors as governed by the provisions of Section 3 of Article III, if a quorum exists, action on a matter by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless a greater vote is required by law or the Articles of Incorporation or these By-Laws.

Section 11. **Informal action by members.** Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting if one or more written consents, describing the action so taken, shall be signed by all of the members who would be entitled to vote upon such action at a meeting, and delivered to the association for inclusion in the minutes or filing with the corporate records.

ARTICLE III BOARD OF DIRECTORS

Section 1. **General powers.** All corporate powers shall be exercised by or under the authority of, and the business and affairs of the association shall be managed under the direction of, the Board of Directors.

Section 2. **Number and qualifications.** The number of directors constituting the initial Board of Directors shall be one. The members or Board of Directors may from time to time change the number of directors by amendment of these By-Laws. Directors need to be residents of Branch Creek Phase 2A Subdivision.

Section 3. **Election.** Except as provided in Section 6 of this Article III, the directors shall be elected at the annual meeting of members. Those persons who receive the highest number of votes at a meeting at which quorum is present shall be deemed to have been elected.

Section 4. **Term of directors.** Each initial director shall hold office until the first members' meeting at which directors are elected or until such director's death, resignation, or removal. The term of every other director shall expire at the next annual members' meeting following the director's election or upon such director's death, resignation, or removal. The term of a director elected to fill a vacancy expires at the next members' meeting at which directors are elected. A decrease in the number of directors does not shorten an incumbent director's term. Despite the expiration of a director's term, such director shall continue to serve until a successor shall be elected and qualifies or until there is a decrease in the number of directors.

Section 5. **Removal.** Any director may be removed at any time with or without cause by a vote of the members if the number of votes cast to remove such director

exceeds the number of votes cast not to remove him, provided that a director shall not be removed when the number of votes sufficient to elect him under cumulative voting is voted against his removal. If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him. A director may not be removed by the members at a meeting unless the notice of the meeting states that the purpose, or one of the purposes, of the meeting is removal of the director. If any directors are so removed, new directors may be elected at the same meeting.

A Director is automatically removed if he or she moves his or her primary residence outside the Branch Creek Phase 2A Subdivision.

- Section 6.** **Vacancies.** Any vacancy occurring in the Board of Directors, including without limitation a vacancy resulting from an increase in the number of directors or from the failure by the members to elect the full authorized number of directors, may be filled by the members or by the Board of Directors, whichever group shall act first. If the directors remaining in office do not constitute a quorum, the directors may fill the vacancy by the affirmative vote of a majority of the remaining directors. If the vacant office was held by a director elected by a voting group, only the remaining directors or directors elected by that voting group or the holders of membership interests of that voting group are entitled to fill the vacancy.
- Section 7.** **Chairman of Board.** There may be a Chairman of the Board of Directors elected by the directors from their number at any meeting of the Board. The chairman shall preside at all meetings of the Board of Directors and perform such other duties as may be directed by the Board.
- Section 8.** **Compensation.** The Board of Directors may provide for the reimbursement of directors for any or all expenses incurred by them in connection with such services. The members of the Board of Directors shall serve without compensation for services rendered.
- Section 9.** **Directors During Declarant Control.** The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant so long as the Class B membership exists, as set forth in the Declaration, unless the Declarant shall earlier surrender this right to select Directors. The Directors selected by the Declarant need not be owners of lots or residents in Branch Creek Phase 2A Subdivision. After the period of Declarant appointment, all Directors must be members of the Association.

ARTICLE IV MEETINGS OF DIRECTORS

- Section 1.** **Regular meetings.** A regular meeting of the Board of Directors shall be held immediately after, and at the same place as, the annual meeting of members. In addition, the Board of Directors may provide, by resolution, the time and place, either within or without the State of South Carolina, for the holding of additional regular meetings.
- Section 2.** **Special meetings.** Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board, if any, by the President or by a majority of the directors. Such a meeting may be held either within or without the State of South Carolina, as fixed by the person or persons calling the meeting.
- Section 3.** **Notice of meetings.** Regular meetings of the Board of Directors may be held with notice. The person or persons calling a special meeting of the Board of Directors shall, at least five (5) days before the meeting, give or cause to be given notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called. Any duly convened regular or special meeting may be adjourned by the directors to a later time without further notice.
- Section 4.** **Waiver of notice.** Any director may waive notice of any meeting before or after the meeting. The waiver must be in writing, signed by the director entitled to the notice, and delivered to the association for inclusion in the minutes or filing with the corporate records. A director's attendance at or participation in a meeting waives any required notice of such meeting unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or to transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.
- Section 5.** **Quorum.** Unless the Articles of Incorporation of these By-Laws provide otherwise, a majority of the number of directors fixed by or pursuant to these By-Laws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, or if no number is so fixed, the number of directors in office immediately before the meeting begins shall constitute a quorum.
- Section 6.** **Manner of acting.** Except as otherwise provided in the articles of incorporation of these By-Laws, including Section 8 of this Article IV, the affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.
- Section 7.** **Presumption of assent.** A director who is present at a meeting of the Board of Directors or a committee of the Board of Directors when corporate action is taken is deemed to have assented to the action taken unless (a) he objects at the beginning of the meeting, or promptly upon his arrival, to holding it or to

transacting business at the meeting, or (b) his dissent or abstention from the action taken is entered in the minutes of the meeting, or (c) he files written notice of his dissent or abstention with the presiding officer of the meeting before its adjournment or with the association immediately after the adjournment of the meeting. Such right of dissent or abstention is not available to a director who votes in favor of the action taken.

Section 8. **Action without meeting.** Action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is taken by all members of the Board. The action must be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records.

Section 9. **Committees of the Board.** The Board of Directors may create an Executive Committee and other committees of the board and appoint members of the Board of Directors to serve on them. The creation of a committee of the Board and appointment of members to it must be approved by the greater of (a) a majority of the number of directors in office when the action is taken or (b) the number of directors required to take action pursuant to Section 6 of this Article IV. Each committee of the board must have two or more members and, to the extent authorized by law and specified by the Board of Directors, shall have and may exercise all of the authority of the Board of Directors in the management of the association. Each committee member serves at the pleasure of the Board of Directors. The provisions in these By-Laws governing meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the Board of Directors apply to committees of the Board established under this section.

ARTICLE V POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. **Powers.** The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association pursuant to the provisions of the Declaration. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- (d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meets of the Board of Directors without good cause;
- (e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and contract with a management company to manage the operation of the Association, and in the event a contract is entered into with a management company such contract must be terminable by the Board of Directors without cause or penalty on thirty (30) days or less notice and any Management contract made with the Declarant shall be for a period not to exceed three years;
- (f) employ attorneys to represent Association when deemed necessary;
- (g) grant easements for the installation and maintenance of sewerage, utilities or drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the Properties; and
- (h) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem appropriate.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or to any special meeting when such statement is requested in writing by members entitled to at least one-fourth (1/4) of the votes appurtenant to Class A lots.
- (b) supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
 1. fix the amount of the annual assessment against each lot prior to December 1 of each year;
 2. send written notice of each assessment to each owner subject

thereto at least fifteen (15) days and before January 1 of each year;

3. foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment.
 - (e) procure and maintain adequate liability insurance covering the Association in an amount not less than \$1,000,000.00 and adequate hazard insurance on the real and personal property owned by the Association;
 - (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
 - (g) cause the Common Area and all improvements erected thereon to be maintained; and
 - (h) cause individual lots to be maintained if required by the Declaration.

ARTICLE VI OFFICERS

- Section 1. Officers of the association.** The officers of the association shall consist of a President, a Secretary, Treasurer, and such Vice-Presidents, Assistant Secretaries, Assistant Treasurers, and other officers as may from time to time be appointed by or under the authority of the Board of Directors. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where action of two or more officers is required
- Section 2. Appointment and term.** The officers of the association shall be appointed by the Board of Directors or by a duly appointed officer authorized by the Board of Directors to appoint one or more officers or assistant officers. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or be otherwise disqualified to serve.
- Section 3. Compensation of officers.** There shall be no direct compensation for officers of the

association. The Board of Directors may provide for reimbursement of officers for any and all expenses incurred by them in connection with such services.

Section 4. **Removal.** Any officer may be removed by majority vote of the Board of Directors at any time, with or without cause, but such removal shall not itself affect the officer's contract rights, if any, with the association.

Section 5. **Resignation.** An officer may resign at any time by communicating his resignation to the association, orally or in writing. A resignation is effective when communicated unless it specifies in writing a later effective date. If a resignation is made effective at a later date that is accepted by the association, the Board of Directors may fill the pending vacancy before the effective date if the Board provides that the successor does not take office until the effective date. An officer's resignation does not affect the association's contract rights, if any, with the officer.

Section 6. **Bonds.** The Board of Directors may by resolution require any officer, agent, or employee of the association to give bond to the association, with sufficient sureties, conditioned on the faithful performance of the duties of his respective office or position, and to comply with such other conditions as may from time to time be required by the Board of Directors.

Section 7. **President.** The President shall be the principal executive officer of the association and, subject to the control of the Board of Directors, shall in general supervise and control all the business and affairs of the association. He shall, when present, preside at all meetings of the members. He shall sign, with the Secretary, an assistant Secretary, or any other proper officer of the association thereunto authorized by the Board of Directors, certificates for membership interests of the association, any deeds, mortgages, bonds, contracts, or other instrument which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the association, or shall be required by law to be otherwise signed or executed; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 8. **Vice-Presidents.** In the absence of the President or in the event of his death, inability or refusal to act, the Vice-President, if such position exists, in the order of his length of service as such, unless otherwise determined by the Board of Directors, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. Any Vice-President may sign, with the Secretary or an Assistant Secretary, certificates for membership interests of the association;

shall perform such other duties as from time to time may be prescribed by the President of Board of Directors.

Section 9. Secretary. The Secretary shall: (a) keep the minutes of the meetings of members, of the Board of Directors, and of all committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) maintain and authenticate the records of the association and be custodian of the seal of the association and see that the seal of the association is affixed to all documents the execution of which on behalf of the association under its seal is duly authorized; (d) sign with the President, or a Vice-President, certificates for membership interests of the association, the issuance of which shall have been authorized by resolution of the Board of Directors; (e) maintain and have general charge of the stock transfer books of the association; (f) prepare or cause to be prepared membership interests holder lists prior to each meeting of members as required by law; (g) attest the signature or certify the incumbency or signature of any officer of the association; and (h) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be prescribed by the President or by the Board of Directors.

Section 10. Assistant Secretaries. In the absence of the secretary or in the event of his death, inability or refusal to act, the assistant Secretaries in order of their length of service as Assistant Secretary, unless otherwise determined by the Board of Directors, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. They shall perform such other duties as may be prescribed by the Secretary, by the President, or by the Board of Directors. Any Assistant Secretary may sign, with the President or a Vice-President, certificates for membership interests of the association.

Section 11. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the association; receive and give receipts for monies due and payable to the association from any source whatsoever, and deposit all such monies in the name of the association in such depositories as shall be selected in accordance with the provisions of Section 4 of Article VI of these By-Laws; (b) maintain appropriate accounting records as required by law; (c) prepare, or cause to be prepared, annual financial statements of the association that include a balance sheet as of the end of the fiscal year and an income and cash flow statement for that year, which statements, or a written notice of their availability, shall be mailed to each membership interest holder within 120 days after the end of such fiscal year; and (d) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be prescribed by the President or the Board of Directors.

Section 12. **Assistant Treasurers.** In the absence of the Treasurer or in the event of his death, inability or refusal to act, the Assistant Treasurers in order of their length of service as such, unless otherwise determined by the Board of Directors, shall perform the duties of the Treasurer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Treasurer. They shall perform such other duties as may be prescribed by the Treasurer, by the President, or by the Board of Directors.

ARTICLE VII CONTRACTS, LOANS, CHECKS, AND DEPOSITS

Section 1. **Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association, and such authority may be general or confined to specific instances.

Section 2. **Loans.** No loans shall be contracted on behalf of the association and no evidence of indebtedness shall be issued in its name without unanimous vote of the Board of Directors.

Section 3. **Prohibition on Loans to Officers and Directors.** The Board of Directors shall not propose or authorize any loans to officers or directors of the Association.

Section 4. **Checks and drafts.** All checks, drafts, or other orders for the payment of money, issued in the name of the association, shall be signed by such officer or officers, agent or agents of the association and in such manner as shall from time to time be determined by the Board of Directors.

Section 5. **Deposits.** All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in such depositories as may be selected by or under the authority of the Board of Directors.

ARTICLE VIII MEMBERSHIP INTERESTS AND THEIR TRANSFER

Section 1. **Certificates for membership interests.** Membership interests in the association shall be evidenced by a deed in the Charleston County Register of Deeds Office for fee simple ownership of a lot or lots in the Branch Creek Phase 2A Subdivision.

Section 2. **Membership and Voting Rights.** Article III of the recorded "Declaration of Covenants, Conditions and Restrictions for Branch Creek Phase 2A Subdivision is incorporated herein by reference.

Section 3. Fixing record date. The Board of Directors may fix a future date as the record date for one or more voting groups in order to determine the members entitled to notice of a members' meeting, to demand a special meeting, to vote, or to take any other action. Such record date may not be more than seventy days before the meeting or action requiring a determination of members. A determination of members entitled to notice of or to vote at a members meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date for the adjourned meeting, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

If no record date is fixed by the Board of Directors for the determination of members entitled to notice of or to vote at a meeting of members, the close of business on the day before the first notice of the meeting is delivered to members shall be the record date for such determination of members.

Section 4. Holder of record. Except as otherwise required by law, the association may treat the person in whose name the membership interest stand of record on its books as the absolute owner of the membership interests and the person exclusively entitled to receive notification and distributions, to vote, and to otherwise exercise the rights, powers, and privileges of ownership of such membership interests.

Section 5. Distribution upon dissolution. Upon dissolution of the corporation, the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provision made therefore, be distributed to any association or associations organized for purposes similar to those of other non-profit organizations.

ARTICLE IX. INDEMNIFICATION

Any person who at any time serves or has served as a director of the association, or who, while serving as a director of the association, serves or has served, at the request of the association, as a director, officer, executive, trustee, or employee shall have a right to be indemnified by the association to the fullest extent permitted by law against (a) reasonable expenses, including attorneys' fees, incurred by him in connection with any threatened, pending, or completed civil, criminal, administrative, investigative, or arbitral action, suit, or proceeding (and any appeal therein), whether or not brought by or on behalf of the association, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine (including an excise tax assessed with respect to an employee benefit plan), penalty, or settlement for which he may have become liable in any such action, suit or proceeding.

The Board of Directors of the association shall take all such action as may be necessary and appropriate to authorize the association to pay the indemnification required by this By-Law, including, without limitation, making a determination that indemnification is permissible in the circumstances and a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him. The Board of Directors may appoint a committee or special counsel to make such determination and evaluation. To the extent needed, the Board shall give notice to, and obtain approval by, the members of the association for any decision to indemnify.

Any person who at any time after the adoption of this By-Law serves or has served in the aforesaid capacity for or on behalf of the association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this By-Law.

ARTICLE X GENERAL PROVISIONS

Section 1. **Seal.** The corporate seal of the association shall consist of two concentric circles between which is the name of the association and in the center of which is inscribed SEAL; and such seal, as impressed or affixed on the margin hereof, is hereby adopted as the corporate seal of the association.

Section 2. **Fiscal year.** The fiscal year of the association shall be fixed by the Board of Directors.

Section 3. **Amendments.** These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of Members present at a meeting dully called for such purpose in person or by proxy. Except as otherwise provided in the Articles of Incorporation or By-Laws, these By-Laws may be amended or repealed and new By-Laws may be adopted by the Board of Directors.

No By-Law adopted, amended, or repealed by the members shall be readopted, amended, or repealed by the Board of Directors, unless the Articles of Incorporation or a By-Law adopted by the members authorizes the Board of Directors to adopt, amend, or repeal that particular By-Law or the By-Laws generally.

Section 4. **Definitions.** Unless the context otherwise requires, terms used in these By-Laws shall have the meanings assigned to them in the South Carolina Business Association Act to the extent defined therein.

ARTICLE XI COMMITTEES

The Association shall appoint a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose and consistent with the Declaration and these Bylaws. The Board of Directors making the appointment of a committee shall designate a chairman of said committee.

ARTICLE XII ASSESSMENTS

As more fully provided in Article VI of the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquents. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate set forth in the declaration, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney fees of any action shall be added to the amount of such assessment. Any payments made to the Association shall be first applied to costs and attorneys' fees related to collection efforts, then to late charges, then to interest, and only then to such assessments. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his lot.

ARTICLE XIII AMENDMENTS


In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control, and in the case of conflict between the Declaration and the Articles, the Articles shall control.

ARTICLE XIV VIOLATION OF RULES AND REGULATIONS

Failure to abide by any Rules or Regulations published by the Association shall be grounds for an action, brought by the Association or any aggrieved Owner, to recover damages, or obtain injunctive and equitable relief, or both. In addition to these remedies, in the event of violation by an owner of any rules or regulations, such owner's voting rights and rights to use the recreational facilities may be suspended by the Board after a hearing at which the general requirements of due process shall be observed. The duration of such suspension shall be set by the Board and shall not exceed sixty (60) days for each violation. Such hearing shall only be held by the Board after giving the owner ten (10) days prior written notice which specifies each alleged violation and sets the time, place and date of the hearing. A determination of the violation and the time of suspension or other sanction shall be made by a majority vote of the Board. The owner shall

have the right to appeal any adverse ruling of the Board and shall be entitled to a hearing de novo before the membership of the Association, at which the general requirements of due process shall be observed. Upon an appeal by an Owner of a decision by the Board, said appeal shall be heard within 90 days of the date of the appeal, and the decision of the Board shall remain in effect unless overruled by a majority vote of the members present at the special meeting.

This the 15 day of ^{December}~~July~~, 2013.

 (Seal)

Jeff Cargne, Director

 (Seal)

Mark Boyce, Director