

**FIRST AMENDMENT TO, AND RESTATEMENT OF, DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
TOWNHOMES OF KENSINGTON AT PARK WEST ASSOCIATION, INC.**

This FIRST AMENDMENT TO, AND RESTATEMENT OF, DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWNHOMES OF KENSINGTON AT PARK WEST, INC. (the “**Restatement**”) is made effective as of the 28<sup>th</sup> day of July, 2006 (the “Effective Date”), by Park West Development, Inc., a South Carolina corporation (hereinafter referred to as “Declarant”) and Townhomes of Kensington at Park West Association, Inc., a South Carolina non-profit corporation (hereinafter referred to as the “Association”) and Lennar Carolinas, LLC, a Delaware limited liability company (hereinafter referred to as “Lennar”).

**WITNESSETH:**

WHEREAS, Declarant by Declaration of Covenants, Conditions and Restrictions for the Townhomes of Kensington at Park West Association, Inc. dated January 11, 2005, and recorded January 12, 2005, in Book J-522 Page 393 et seq. (the “Initial Declaration”), in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina (hereinafter, the “RMC”); as supplemented by First Supplemental Declaration to Townhomes of Kensington at Park West Association, Inc. A Park West Neighborhood Declaration of Covenants, Conditions and Restrictions dated November 14, 2005, and recorded November 15, 2005, in Book J-562 Page 492 et seq., in the RMC (which Initial Declaration and First Supplemental Declaration are hereinafter referred to as the “Declaration”), made certain property described therein and generally known as Kensington in Park West, subject to the aforesaid Declaration; and

WHEREAS, Declarant transferred, sold and conveyed unto Lennar, and Lennar is the present Owner of, One Hundred percent (100%) of all of the developed Lots (as defined in the Declaration) located in Kensington and being more particularly described as Lots 1 through 11, inclusive, 37 through 45, inclusive, Kensington Phase I, and Lots 12 through 36, inclusive, Kensington Phase II; and

WHEREAS, pursuant to Article 11.3, Declarant and the Association, with the consent of Lennar, desire to amend the Declaration to (a) provide for a “Working Capital Assessment” to be paid to the Association by all Units, as defined in Section 1.1.29 of the Declaration, at the time of certain conveyances of a Unit; (b) modify the provisions of Section 5.11.1 (Landscape Maintenance) and Section 5.11.2 (Primary Building and Roof Maintenance) to provide that the costs of special services and maintenance as set forth therein be shared and assessed equally among all Units in a Townhome Block (as defined in the Declaration); (c) permit the Association to obtain a master casualty policy, and master liability policy, if applicable, covering more than one Townhome Block and to establish a method of allocating the cost thereof among the Units covered by such policy or policies; (d) clarify certain provisions regarding Assessments; (e) correct the name of the Association from “The Townhomes of Kensington at Park West Association, Inc.” to

“Townhomes of Kensington at Park West Association, Inc.”; and (f) correct certain minor typographical errors contained in the Declaration; and

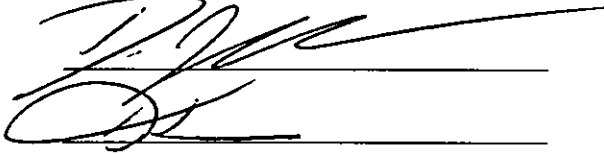
WHEREAS, the parties have determined that consolidation of all such amendments in a single restatement will be beneficial to all Owners and persons referring to the Declaration;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT Declarant and the Association, with the consent of Lennar, do hereby declare that the Declaration is hereby deleted in its entirety and amended, replaced and restated as set forth in Exhibit 1 attached hereto and incorporated herein.


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SIGNATURES BEGIN ON NEXT PAGE**

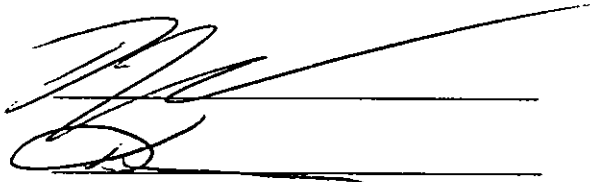
WITNESS our hands and seals, this 28<sup>th</sup> day of July, in the year of our Lord two thousand six and in the two hundred and thirtieth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED  
THE PRESENCE OF:


  
\_\_\_\_\_

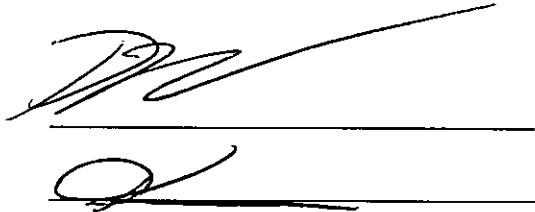
PARK WEST DEVELOPMENT,  
INC.

By:   
Its: V.P.

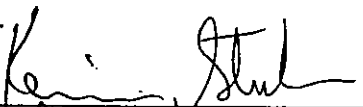
  
\_\_\_\_\_

LENNAR CAROLINAS, LLC

By:   
Its: Division President

  
\_\_\_\_\_

TOWNHOMES OF KENSINGTON  
AT PARK WEST ASSOCIATION,  
INC.


By:   
Its: President

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, Karen S. Hopkins, Notary Public for the State of South Carolina, do hereby certify that Park West Development, Inc., by Kevin Steelman, its Vice-President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 20<sup>th</sup> day of July, 2006.


  
\_\_\_\_\_  
Notary Public, State of South Carolina  
My commission expires: 10/9/2012

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, Karen S. Hopkins, Notary Public for the State of South Carolina, do hereby certify that Townhomes of Kensington at Park West Association, Inc., by Kevin Steelman, its President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 20<sup>th</sup> day of July, 2006.


  
\_\_\_\_\_  
Notary Public, State of South Carolina  
My commission expires: 10/9/2012

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, Karen S. Hopkins, Notary Public for the State of South Carolina, do hereby certify that Lennar Carolinas, LLC, by Michael Bottoms, its Division President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 20<sup>th</sup> day of July, 2006.

  
\_\_\_\_\_  
Notary Public, State of South Carolina  
My commission expires: 10/9/2012

**BKA 593PG180**

**EXHIBIT 1:**

**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**TOWNHOMES OF KENSINGTON AT PARK WEST ASSOCIATION,  
INC.**

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**TOWNHOMES OF KENSINGTON AT PARK WEST ASSOCIATION, INC.**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TOWNHOMES OF KENSINGTON AT PARK WEST ASSOCIATION, INC.**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWNHOMES OF KENSINGTON AT PARK WEST ASSOCIATION, INC. is made this 28th day of July, 2006, by Park West Development, Inc., a South Carolina corporation (hereinafter referred to as "Declarant").

WITNESSETH THAT:

WHEREAS, Declarant as the owner, or if not the owner, with the consent of the owner, of the Property, as hereinafter defined, located in Park West, Town of Mount Pleasant, Charleston County, South Carolina, and Declarant desires to subject the Property to the provisions of this Declaration in order to provide a flexible and reasonable method for the administration, assessment and maintenance of the Common Areas, as defined below, and the orderly and proper governance of the Property; and

WHEREAS, Declarant intends to develop the Property and to sell the lots within the Property to Lennar Carolinas, LLC, or its affiliates, ("Lennar") for the construction and sale of Townhomes thereon; and

WHEREAS, prior to loss of Controlling Interest by Declarant, as defined herein, Declarant, at its sole option, may assign its rights under this Declaration to Lennar; and

WHEREAS, in the event Declarant assigns its rights under this Declaration to Galloway prior to loss of Controlling Interest, Lennar shall be bound by these covenants without reservation.

NOW THEREFORE, this Declaration and the covenants, restrictions and easements set forth herein shall be covenants to run with the land and all the Property is subject and subordinate to the provisions of this Declaration. The Declaration shall inure to the benefit of and shall be binding upon each Owner and his, her or its respective heirs, legal representatives, successors, lessees, grantees, assigns and mortgagees.

**BY THE RECORDING OF A DEED OR THE ACCEPTANCE OF TITLE TO A UNIT OR ANY INTEREST THEREIN, THE PERSON OR ENTITY TO WHOM SUCH UNIT OR INTEREST IS CONVEYED, AND THEIR HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES, GRANTEEES, ASSIGNS AND MORTGAGEES SHALL BE DEEMED TO HAVE AGREED TO BE BOUND BY THIS DECLARATION AND THE BY-LAWS OF THE ASSOCIATION.**

## **ARTICLE 1. DEFINITIONS**

**BA 593PG185**

### **1.1. DEFINITIONS**

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have all the following meanings, and all definitions shall be applicable to the singular and plural forms of any such term(s):

1.1.1. "Added Property(s)" means real property, whether or not owned by the Declarant, which is made subject to this Declaration as provided in Article II hereof.

1.1.2. "Affiliate" means any entity that is owned by the Declarant, which owns the Declarant, or in which the Declarant or Persons holding an interest in Declarant own at least fifty per cent (50%) of the interests.

1.1.3. "Areas of Common Responsibility" means the Common Areas and any other area for which the Association expressly assumes the responsibility for maintenance, repair or management, including, without limitation, portions of the Property specified by the Association that contain facilities which benefit more than one Unit. The Areas of Common Responsibility may include, without limitation, (a) street shoulders and curbs, walkways and bicycle paths, signage, landscaping, street lighting, signage lighting and landscape lighting, whether within the Common Area or unpaved portions of designated common roadways or rights-of-way which are not the responsibility of the Park West Master Association (as such rights of way are noted on the plat of the Property or any portion thereof, which plat is approved by the Declarant or the Association), whether said rights-of-way are privately owned, dedicated to the public, or conveyed to the State of South Carolina or any municipality thereof, (b) lakes, lagoons and drainage ways, and (c) any common utility lines or facilities which have not been dedicated to and accepted for maintenance by a private or public utility.

1.1.4. "Assessment" means the charges from time to time assessed against a Unit by the Association in the manner herein provided, and shall include Regular, Individual, and Special Assessments.

1.1.5. "Association; No Members." Association means Townhomes of Kensington at Park West Association, Inc., a South Carolina mutual benefit non-profit corporation, without members, under the South Carolina Nonprofit Corporation Act, SC Code Section 33-31-10 et seq. (the "Act"). Because of the authority vested in the Board of Directors, the rights and authority of Owners are limited to the extent set forth in this Declaration and the Bylaws and the term "Owner" is not synonymous with the term "member" as set forth in the Act.

1.1.6. "Board of Directors" or "Board" means the Board of Directors of the Association.

1.1.7. "Bylaws" means the Bylaws duly adopted by the Association which govern the administration and operation of the Association, as may be amended from time to time. A copy of the Bylaws is attached as Exhibit B.

1.1.8. "Common Areas" means all areas shown and designated as a Common Area, or similar wording clearly indicating such intent, on any recorded plat of the Property, or any portion thereof, which plat has been approved in writing by Declarant or the Association, and made subject to this Declaration. **THE DESIGNATION OF ANY OF THE PROPERTY OR IMPROVEMENTS THEREON AS COMMON AREAS SHALL NOT MEAN OR IMPLY THAT THE PUBLIC AT LARGE ACQUIRES ANY EASEMENT OF USE OR ENJOYMENT THEREIN.**

1.1.9. "Common Expenses" means all liabilities or expenditures made or incurred by or on behalf of the Association, together with all funds necessary for the creation or maintenance of financial, equipment or capital improvement reserves, consistent with the provisions of this Declaration.

1.1.10. "Controlling Interest" means the ownership by Declarant and any Affiliate of Declarant, as of the date of such determination, of Property to which there remains allocated at least ten percent (10%) of the Zoned Density for the Property.

1.1.11. "Declarant" means Park West Development, Inc., a South Carolina corporation, its successors and assigns, and any entity designated as a successor Declarant by Park West Development, Inc. by a recorded Supplemental Declaration, provided, however, that this definition shall not include the purchaser, Owner, or mortgagee of any Unit.

1.1.12. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for The Townhomes of Kensington at Park West Association, Inc. and all amendments or Supplemental Declarations filed for record from time to time in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina ("RMC"). The Declaration is subordinate to the Master Declaration, as defined herein. In the event of any conflict between the Master Declaration and the Declaration, the terms of the Master Declaration shall take precedence.

1.1.13. "Development" means the community constructed or to be constructed upon the Property or Added Property or portions thereof.

1.1.14. "Development Review Board" means the individuals designated by the Master Association to review and approve development plans for the Property submitted pursuant to the Master Declaration or this Declaration.

1.1.15. "Individual Assessment" means an assessment levied against a particular Unit for purposes of defraying the cost of any special services to that Unit, including any Special Individual Assessments.

1.1.16. "Lot" means, for purposes of this Declaration, any plot of land which is platted of record and intended for development of an attached Townhome Unit in a Townhome Block, but which contains no structure for which a certificate of occupancy has been issued by the applicable regulatory authority. (See definition of "Townhome Block" below.)

1.1.17. "Managing Agent" means any entity retained by the Association to manage the Common Areas and Areas of Common Responsibility, or portions thereof, and supervise its maintenance and the operation of the administrative affairs of the Association.

1.1.18. "Master Association" means the Park West Master Association, Inc., a South Carolina not-for-profit corporation.

1.1.19. "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for Park West Master Association, Inc. recorded in Book P-294 at Page 275 et seq., in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina, and all amendments or Supplemental Declarations thereto. In the event of any conflict between the Master Declaration and the Declaration, the terms of the Master Declaration shall take precedence.

1.1.20. "Occupant" means any individual lawfully occupying any Unit, including, without limitation, any Owner, or any family member, guest, invitee, licensee, or tenant of an Owner.

1.1.21. "Owner" means any Person who owns fee simple title to any Unit located on the Property. "Owner" shall not mean a mortgagee unless such mortgagee has acquired title to the Unit or any Person having a contract to purchase a Unit but to whom title has not been conveyed of record. Because of the authority vested in the Board of Directors, the rights and authority of Owners are limited to the extent set forth in this Declaration and the Bylaws and the term "Owner" is not synonymous with the term "member" as set forth in the Act.

1.1.22. Parcel. For purposes of this Declaration, a "Parcel" is a group of contiguous Lots which, upon construction of improvements thereon, will constitute a Townhome Block.

1.1.23. "Permitted Density" means the number of dwelling units which are permitted to be developed within the Property as of the date of recordation of this Declaration, which number is forty five (45) attached single-family dwelling units. If the Declarant subjects Added Property to the Declaration, the Declarant may, in its sole discretion, increase the Zoned Density for the combined Property by the number of dwelling units which may be developed within the Added Property as defined in the deed conveying the Property to the Declarant or in a Supplemental Declaration or recorded Land Use and Density Agreement signed by Declarant.

1.1.24. "Person" means any individual or legal entity, as the context may reasonably require.

1.1.25. "Property" means all the land and improvements thereon described in Exhibit "A" and any Added Property.

1.1.26. "Rules and Regulations" means those standards governing the use, administration and operation of the Property as are more specifically defined in Section 5.4.

1.1.27 "Townhome(s)" or Townhome Unit" means any portion of the Property, which (a) is intended for occupancy as an attached single-family residence, (b) may be independently owned and conveyed, (c) is held under one ownership (which may include, without limitation, ownership by co-tenancy, joint tenancy or tenancy-in-common), and has not been declared into a condominium form of ownership and (d) for which a certificate of occupancy has been issued by the applicable regulatory authority. "Townhome" or "Townhome Unit" excludes Property dedicated to the public unless otherwise specified in the deed from the Declarant or the Association conveying such property or in another recorded document expressly approved by the Declarant. The Association shall have the right to determine whether a Townhome Unit exists and how many Townhome Units exist at a particular time, subject to the provisions of this Declaration.

1.1.28. "Townhome Block" means a group of Townhome Units that share a common roof structure. Each of the Townhome Units which share a common roof structure shall be referred to together as a Townhome Block.

1.1.29 "Unit" means a Lot or a Townhome Unit.

1.1.30. "Wetland Tract" means any piece or tract of the Property designated on a recorded plat as a "Wetlands", "Wetlands Buffer" or "Wetlands Tract" which is the subject matter of a Department of the Army Permit issued by the U.S. Army Corps of Engineers or is the object of a mitigation plan under any such permit; and is subject to the Corps Permit and the Wetlands Covenants set forth in Section 3.1, below.

## **ARTICLE II. PLAN OF DEVELOPMENT**

### **2.1. NON-SEVERABILITY OF RIGHTS**

The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of a Unit as more specifically set forth below, and may not be severed or alienated from such ownership.

## **2.2. GENERAL PLAN OF DEVELOPMENT**

**OKA 593PG189**

### **2.2.1. Responsibilities of Declarant**

Declarant shall be responsible for the development and construction of such roads within the Property as Declarant determines are required for effective circulation within the Property (the "Roads"). It is the intent of Declarant to dedicate the Roads, upon completion, to the applicable public authority. Declarant shall also be solely responsible for (a) the initial installation of such walkways and bicycle paths, signage, landscaping, street lighting, signage lighting and landscape lighting in the Common Areas as Declarant shall determine are appropriate, (b) the initial installation of such landscaping, signage and lighting in the Common Areas as Declarant shall determine are appropriate, (c) the initial installation of drainage ways, main storm water lines, easements, and retention or detention ponds and lagoons serving the drainage needs of the Property, and (d) the installation of primary water, sanitary sewer, cable television and electrical lines within the Property which are adequate to permit the Owner of a Unit to obtain access thereto for the Unit upon payment of standard tap-in or service fees. All such facilities shall be built in conformity with the standards of applicable regulatory agencies and the Development Guidelines of Park West, as set forth in the Master Declaration, or such higher standards as the Developer shall determine.

### **2.2.2. Common Areas and Areas of Common Responsibility**

In addition to any Common Areas shown on the recorded plat of the Property and any Areas of Common Responsibility set forth herein, Declarant or the Association shall designate in a Supplemental Declaration any additional Common Areas and the Areas of Common Responsibility for which the Association or the Master Association shall be responsible. Property so designated shall conform to the development plan approved by the Development Review Board of the Master Association, as amended from time to time. Declarant may convey Common Areas within the Property to the Association or, upon approval of the Master Association, to the Master Association at any time, provided that the conveyance shall be free and clear of all liens (other than those expressly accepted by the Association or the Master Association, as applicable). Upon conveyance, Declarant shall promptly provide to the Association or Master Association, as applicable, a copy of the conveyance documents. Unless expressly approved by the Association, Declarant shall convey all Common Areas within the Property to the Association or Master Association no later than ninety (90) days after the date of closing the sale of the last Unit in the Development; provided, however, Declarant shall convey all Common Areas within the Development or any Townhome Block at an earlier date if required by a governmental agency having jurisdiction over the Development (such as the Veterans Administration or Federal Housing Administration). After approved conveyance of a Common Area or designation of an Area of Common Responsibility, the Association or Master Association, as applicable, shall be fully responsible for its operation, maintenance and repair.

**2.2.3. Subjecting Added Property to the Declaration**

Any Person may apply to the Association to have said Added Property made subject to this Declaration. Upon approval of the Board of Directors of the Association, the owner of the Added Property and the Association shall execute a Supplemental Declaration subjecting said Added Property to this Declaration and to such other terms and conditions as shall be required by the Association as a condition of such approval.

**2.3. INTEREST SUBJECT TO PLAN OF DEVELOPMENT**

Every Owner shall take title, and every mortgagee or holder of a security interest in any part of the Property shall hold such mortgage or security interest subject to the terms and conditions of this Declaration.

**ARTICLE 3. WETLANDS**

**3.1. WETLANDS PERMIT AND PROTECTIVE COVENANTS**

Portions of the Property may be designated as "Wetlands" or "Wetland Buffers" or "Wetlands Tract" pursuant to Department of the Army Charleston District Corps of Engineers Permit No. 94-IT-178, as amended from time-to-time (the "Corps Permit"). The Property is subject to the Declaration and Restrictive Covenants for Wetlands Preservation recorded in the Office of the Register of Mesne Conveyances for Charleston County in Book N-307 at Page 173, as re-recorded in Book P-309 at Page 750, and all amendments thereto (the "Wetlands Covenants"). All deeds to portions of the Property that contain "Wetlands" or "Wetland Buffers" shall contain or be accompanied by a notice that such portions of the Property are subject to the Corps Permit and the Wetlands Covenants. Failure of a deed to contain or be accompanied by such notice shall not preclude the portion of the Property referenced in such deed from being subject to the Corps Permit or the Wetlands Covenants, however.

**ARTICLE 4. PROPERTY RIGHTS**

**4.1. GENERAL RIGHTS OF OWNERS**

Each Unit will, for all purposes, constitute real property which will 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. Each Owner will be entitled to the exclusive ownership and possession of his property, subject to the provisions of this Declaration. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services or for the provision of support to any Unit lie partially within and partially

outside of the designated boundaries of the lot, any portions thereof which serve only such Unit will be deemed to be a part thereof, and any portions thereof which serve more than one such Unit or any portion of the Common Areas will be deemed to be a part of the Common Areas. The ownership of each Unit subject to this Declaration will include, and there will pass with each Unit as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, and the limitations applicable, which will include, but not be limited to, membership in Association. Each Owner will automatically become a member of Association and will remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in Association will automatically pass to his successor-in-title to his property.

#### **4.2. OWNER'S EASEMENT OF ENJOYMENT**

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 Bylaws and the terms hereof, every Owner shall have a nonexclusive right, privilege, and easement of use and enjoyment in, to, over, and through the Common Areas which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

a. The right of Declarant or the Association to levy assessments for Common Expenses for the maintenance of Common Areas and Areas of Common Responsibility;

b. The right of Declarant and of Association to dedicate, transfer, or convey, all or any part of the Common Areas, with or without any consideration, to any governmental body, district, agency, authority, or to any utility company, provided that no such dedication, transfer, or conveyance shall adversely affect the use of the Common Areas by the Owners;

c. The rights and easements specifically reserved to Declarant and to Association in this Declaration;

d. The right of Declarant and of the Association to grant and reserve easements and right-of-ways, through, under, over and across the lots and the Common Areas and Areas of Common Responsibility for the installation, maintenance, and inspection of lines and appurtenances for public and private water, sewer, drainage, fuel oil and other utilities and services, including a cable television system and irrigation or lawn sprinkler systems, and the right of Declarant to grant and reserve easements and right-of-ways through, over and upon, and across the Common Areas and Areas of Common Responsibility for the operation and maintenance of the those areas;

e. The right of the Association to enact rules and regulations to govern the use of the Common Areas and Areas of Common Responsibility.



**4.3. ADDITIONAL STRUCTURES**

Neither the Association nor any Owner shall, without the prior written approval of Declarant or the Board of Directors, erect, construct, or otherwise locate any structure or other improvement in the Common Areas.

**4.4. CHANGES IN BOUNDARIES; ADDITIONS TO COMMON AREAS**

So long as Declarant holds a Controlling Interest, Declarant reserves the right and power, without the approval of the Association, to change the boundary lines between any Common Areas and other Property owned by Declarant or any Affiliate, or to add portions of the Property to the Common Areas or Areas of Common Responsibility.

**4.5. EASEMENTS FOR DECLARANT**

During the period that Declarant owns any of the Property, or until such earlier time as Declarant records a Supplemental Declaration relinquishing its rights as set forth in this section, Declarant shall have an alienable and transferable right and easement on, over, through, under, and across the Common Area and Area of Common Responsibility for the purpose of constructing, installing, maintaining, repairing and replacing such other improvements to the Property as Declarant desires. The exercise of such right and easement by Persons other than Declarant shall be undertaken only with the prior written approval of Declarant so long as Declarant holds a Controlling Interest.

**4.6. EASEMENTS FOR ASSOCIATION**

The Association and Master Association and their directors, officers, agents and employees, including, but not limited to, any Managing Agent of the Association or Master Association and any officers, agents and employees of such Managing Agent, shall have a general right and easement to enter upon the Property in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner directly affected thereby.

**4.7 EASEMENTS FOR UTILITIES AND SERVICES**

The Declarant and/or the Master Association shall have a transferable, perpetual right to grant and accept easements to and from any private entity or public authority, agency, public service district, public or private utility or other Person, upon, over, under and across the Lots, Common Areas, and Areas of Common Responsibility for constructing, installing, maintaining, repairing, inspecting and replacing master television antennae or television cable systems, data transmission systems, security and similar systems, landscaping, and all utility facilities and services, including, but not limited to,

storm and sanitary sewer systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Declarant or Master Association without notice to or consent by the Association. Except as permitted by the Master Declaration, the Master Association shall not grant such easements over Property owned by the Declarant or its Affiliates without the express written permission of the owner. To the extent feasible, all utility lines serving the Property and located therein shall be located underground. Unless permitted by the terms of the easement, or unless permitted by the grantee of the easement or the commission, municipality, utility or other entity controlling the easement area, no structure shall be erected, no paving shall be laid, and no trees or shrubs shall be planted in such easement without the written consent of the grantee of such easement.

#### **4.8 ENCROACHMENTS AND EASEMENTS**

Declarant hereby reserves and grants a perpetual, non-exclusive easement over each Unit, for the benefit of each adjoining Unit, the Common Areas, and Areas of Common Responsibility for the purpose of accommodating any encroachment due to settlement or shifting of improvements, roof overhangs, fences constructed, gutters, or draining of rainwater from roofs, condemnation, eminent domain proceedings, or the architectural design or practicality of construction of any dwelling and for the maintenance of said encroachments so long as they shall exist. The rights and obligations of Owners shall not be altered in any way by said encroachment, provided, however, that in no event shall a valid easement for encroachment be created if such encroachment occurred due to the willful misconduct of an Owner claiming the easement. Any permissible encroachments shall be further required to conform to applicable zoning laws.

Declarant further grants to Association a perpetual, non-exclusive easement over each Unit for the existence, continuance, and maintenance of an encroachment of any improvements located on any Common Areas or Areas of Common Responsibility upon any Unit, which easement may be existing or come into existence hereinafter as a result of the construction, repair, shifting, or settlement of improvements, roof overhangs, fences constructed, gutters, or draining of rainwater from roofs, condemnation, eminent domain proceedings, or the architectural design or practicality of construction of any Common Areas. Any permissible encroachments shall be further required to conform to applicable zoning laws.

#### **4.9. MUTUAL EASEMENTS**

Declarant hereby grants every Owner a perpetual, non-exclusive easement to use and maintain all pipes, wires, ducts, cables, conduits, utility lines, drainage lines, water lines, and other common facilities located on any portion of a Unit that serve an individual Owner. Declarant further reserves, for the benefit of itself and Association, the right of access to each Unit to inspect same in order to correct any conditions threatening another Unit or to correct the violation of any provision set forth in this

Declaration, the Bylaws, or in any rules and regulations promulgated by Association, provided, however, that a request for entry is made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

**4.10. DRAINAGE EASEMENTS**

Declarant hereby reserves unto itself, and grants to the Association and all Owners, a perpetual, non-exclusive easement in common in, upon, over, under, across, and through the Lots, Common Areas, and Areas of Common Responsibility for surface water runoff, water runoff from roofs, and drainage caused by natural forces and elements, grading or improvements located upon the lots and common areas. No Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the property. Due diligence shall be exercised by each Owner to insure that surface water drainage is controlled and that no damage is caused to an adjoining Unit, Common Area or Area of Common Responsibility

**4.11. LANDSCAPE EASEMENT**

There is hereby reserved for the benefit of Declarant and the Association an alienable, transferable, and perpetual right and easement to enter upon any Unit subject to this Declaration for the purpose of maintaining the yard of such Unit in accordance with Section 5.10.1, including, but not limited to, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth, and removing trash and other debris.

**4.12. EASEMENTS FOR MAINTENANCE**

Each Owner hereby grants to Declarant, the Association and to all other Owners of Units in the Townhome Block a nonexclusive easement for access of ingress and egress over his/her Unit as may be reasonably necessary to perform maintenance, repairs, or replacement of any portion of the Units in the Townhome Block as provided in this Declaration; provided, however, that any Person exercising this easement right shall repair in a good and workmanlike manner any damage caused in exercising such easement right.

**4.13 USE OF EASEMENT**

Subject to all of the other conditions, covenants and restrictions contained in this Declaration, each Owner shall have the right to use the portion of his Unit subject to any easement in any manner not inconsistent with the purposes for which such easement is reserved or granted. Except as stated to the contrary in this Declaration, the Owner shall

continuously maintain the area within such easement and all improvements within the bounds, except for such improvements for which a public authority or public utility is or may become responsible for maintenance, or for which Declarant, the Association or Master Association expressly assumes responsibility.

**4.14. MUNICIPAL EASEMENT**

Police, fire, water, health and other authorized municipal officials, employees and vehicles shall have the right of unrestricted ingress and egress to the Common Areas, and any portion thereof, for the performance of their official duties.

**4.15. AGRICULTURAL USES**

Declarant and its Affiliates reserve the right to use any portion of the Property not conveyed to others for "Agricultural" purposes, as defined in S.C. Code Section 12-31-230 (a), as it may be amended from time to time, and Declarant reserves the right to permit such use by others.

**ARTICLE 5. THE ASSOCIATION**

**5.1. MEMBERS**

The Association shall not have Members. The rights and authority of Owners are limited to the extent set forth in this Declaration and the Bylaws.

**5.2 GOVERNANCE**

The Association shall be governed by a Board of Directors selected as set forth herein. The Board of Directors shall function in accordance with this Declaration and the Bylaws, and all Owners shall be bound by this Declaration and the Bylaws. The Bylaws may be amended, from time to time, only as provided herein. The Board of Directors shall constitute the final administrative authority of the Association, and all decisions of the Board of Directors shall be binding upon the Association and the Owners. Unless otherwise expressly stated by this Declaration or the Bylaws, all rights, titles, privileges and obligations vested in or imposed upon the Association shall be held and performed by the Board of Directors.

**5.3. BOARD OF DIRECTORS**

**5.3.1. Subsequent to Loss of Controlling Interest by Declarant**

Following loss of Controlling Interest by Declarant, the Board of Directors shall consist of such number of individuals as may be selected in accordance with the Bylaws.

**5.3.2. Prior to Loss of Controlling Interest by Declarant**

For so long as Declarant owns a Controlling Interest, the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as determined by Declarant from time-to-time. Said individuals need not be Owners of Units.

**5.4. RULES AND REGULATIONS**

The Board of Directors shall have the authority from time to time to adopt Rules and Regulations governing the use, administration and operation of the Property, subject to the terms of the Master Declaration, this Declaration and the Bylaws of the Association. The initial Rules and Regulations are set forth in Exhibit C to this Declaration.

**5.5. ARCHITECTURAL REVIEW**

The Board of Directors shall have the authority from time to time to create an Architectural Review Board and to adopt Rules and Regulations governing its operation, procedures, funding, and scope of authority, provided that such provisions are not inconsistent with the terms of the Master Declaration, this Declaration and the Bylaws of the Association. The initial Architectural Rules and Regulations are set forth in Appendix C-1 to Exhibit C to this Declaration.

**5.6. INDEMNIFICATION OF BOARD, OFFICERS AND MANAGING AGENT**

The members of the Board of Directors, the officers of the Association as may be elected by the Board, and such other officers or employees of the Association or the Managing Agent of the Association as the Board shall specify by written resolution of the Board from time-to-time, shall not be liable to the Owners or Association for any mistake in judgment or acts or omissions unless such act or omission was made in bad faith or was the result of gross negligence. The Association shall indemnify and hold harmless such non-liable Persons against all liabilities to others arising out of any agreement made by such Persons on behalf of the Association unless such agreement was made in bad faith or with gross negligence.

**5.7. BOARD, MANAGING AGENT AND OFFICERS ACT FOR ASSOCIATION**

Unless otherwise expressly indicated in writing, and in the absence of fraud, bad faith or gross negligence, all contracts and agreements entered into by the Board of

Directors, the Managing Agent or the duly authorized officers of the Association on behalf of the Association shall be deemed executed as agent for the Association.

**5.8. BOARD OF DIRECTOR'S DETERMINATION BINDING**

If a disagreement arises between Owners or, during the period that Declarant owns a Controlling Interest, among or between the Association, Owners and Declarant related to the Common Area or the interpretation and application of this Declaration, the Bylaws, or the Rules and Regulations of the Association, the decision of the Board of Directors regarding the proper disposition of such matter shall be final and binding upon the entities involved and the Association.

**5.9. MANAGEMENT**

The Board of Directors may, in its discretion, retain a Managing Agent or one or more employees of the Association to manage the Common Areas and Areas of Common Responsibility and supervise its maintenance and operation and the operation of the administrative affairs of the Association. The terms of any management or employment agreements shall be determined by the Board of Directors, provided that any management or employment contracts shall (i) permit the termination thereof for cause by the Association upon not more than thirty (30) days prior written notice; and (ii) be for a period of not more than five (5) years. Such contracts may permit renewals thereof for periods not to exceed five (5) years at a time provided that such renewal is approved by the parties. Nothing herein shall prohibit the Association from entering into a management contract with the Declarant or any Affiliate of the Declarant if the terms of such contract are reasonable and consistent with the above provisions.

**5.10. SERVICES**

**5.10.1. Landscape Maintenance**

Because each Townhome Block needs to provide a uniform streetscape, a landscape plan has been or will be developed by the Declarant or Lennar and has or will be approved by the Development Review Board for the front, side and rear yards of each Unit. This landscape plan may not be altered or changed by any Owner of a Unit without the written consent of the Development Review Board. The Association shall maintain the trees, shrubs, grass, walks, and other landscaping features as installed by Declarant or Lennar (excluding trees, shrubs, and other landscaping features added by any Owner with the written consent of the Development Review Board) in the front, side, and rear yards of each Unit. In addition, the Owner of a Unit may plant flowers in any front and side beds established by Declarant in developing the Unit provided such flowers are maintained by the Owner at his/her expense and such maintenance by Owner does not hinder the Association in performing its maintenance of the yards of the Units and/or the exteriors of the Units.

**5.10.2 Building And Roof Maintenance**

The Association shall maintain the shared roof structure of each Townhome Block and the outside of the primary building of each attached Townhome, as further provided in Sections 6 and 7 hereinafter. Each Owner of a Unit shall be responsible for maintaining the building and roof of any detached garage or other detached improvements on the Unit and for maintaining any fencing on the Unit.

**5.10.3 Insurance**

The Association will obtain casualty insurance on each Townhome Block as discussed in Section 8 below.

**5.11. COSTS OF SERVICES ; INDIVIDUAL ASSESSMENTS**

The cost of services and maintenance shall be shared among all the Townhome Units in each Townhome Block in accordance with this section, and shall be assessed to each of the Townhome Units as an Individual Assessment. Costs are to be divided as follows:

**5.11.1. Landscape Maintenance**

The yard landscape maintenance shall be allocated equally among each Unit in a Townhome Block.

**5.11.2 Primary Building And Shared Roof Maintenance**

Except as otherwise specified in this Declaration, the cost of maintaining the outside of the primary building of each attached Townhome and the shared roof in each Townhome Block shall be allocated equally among all Units in the Townhome Block. Each Owner, by accepting a deed to his/her Unit acknowledges that (i) due to different amounts of exposures to the elements and other factors, one or more of the Units in a Townhome Block may require more maintenance than the other Units in such Townhome Block, and (ii) it is in the best interest of the entire Association that all the Units in a Townhome Block be maintained and that the Association not be burdened with undue administrative hardship in performing the maintenance function. Accordingly, each Owner, by accepting a deed to his/her Unit, agrees that the Units in each Townhome Block will be maintained by the Association from the assessments as set forth herein without regard to the actual cost of maintenance of each Unit in the applicable Townhome Block. While separate accounts will not be required, the Association shall account for maintenance expenses by Townhome Block.

### **5.11.3. Insurance**

At each first time closing of a Townhome Unit, the purchaser shall reimburse the Association for the purchaser's share (as set forth hereinafter) of the cost of the master casualty policy, and if applicable, master liability policy, in effect at the time of closing. Each purchaser's share shall be pro-rated from the date of closing to the end of the effective coverage period of the master casualty policy and, if applicable, master liability policy in effect. The cost of the master casualty policy and, if applicable, master liability policy, to be obtained each year by the Association as set forth in Section 8 below hereinafter shall be allocated among the Units in the Townhome Block in accordance with the ratio that the total square footage of a Unit, excluding detached improvements, bears to the total square footage of all the Units in the Townhome Block.

Notwithstanding the foregoing, the Board, in its sole discretion, may obtain a master casualty policy, and if applicable, master liability policy, covering more than one Townhome Block. In the event the master casualty policy, and if applicable, master liability policy, covers more than one Townhome Block, then the cost of such policy or policies shall be allocated among the Units covered by such policy in accordance with the ratio that the total square footage of a Unit, excluding detached improvements, bears to the total square footage of all Units covered by such master casualty policy, and if applicable, master liability policy. The Association shall make and consistently apply rules concerning the determination of square footage and such determination of square footage by the Association shall be final and binding on all Owners. For the purpose of accounting for funds by Townhome Block, if the master casualty policy, and if applicable, master liability policy cover more than one Townhome Block, then a Townhome Block shall be deemed to have a cost equal to the sum of the cost allocated to each Unit within the particular Townhome Block.

## **5.12. RESERVE FUNDS**

### **5.12.1 Roof and Building Reserves**

The Association shall establish and maintain a reserve account for each Townhome Block to be used for the repair or replacement of the shared roof of each Townhome Block based on the expected life and replacement cost of the roof. Additionally, the Association may establish and maintain reserves for major repairs and maintenance to the exterior primary building of each Townhome Block (as set forth herein) and to any Common Areas or Areas of Common Responsibility.

### **5.12.2 Assessments**

Reserve contributions for Townhome roofs and exterior buildings shall be assessed and collected as an Individual Assessment as provided in Section 5.13 and prorated among the Units in a Townhome Block in accordance with the provisions of Section 5.11.2. To the extent there are insufficient funds for needed repairs to or



replacement of the roof or for other maintenance expenses of a Townhome Block, the Board is authorized to make a Special Individual Assessment at such time, and from time-to-time, in an amount as may be necessary and appropriate to provide the funds for such repair and/or replacement. Any such Special Individual Assessment shall be allocated among the Units in the applicable Townhome Blocks in accordance with the provisions of Section 5.11.2.

### **5.12.3. Accounts**

Reserve funds may be commingled in a single account but shall be accounted for by Townhome Block. Reserves for each Townhome Block will be used by the Association for that Townhome Block to make roof repairs as needed and primary building repairs as needed, such as painting, without regard to the actual amount of reserves applied to or the actual cost of repairs to each Townhome in the Townhome Block.

### **5.13. INDIVIDUAL ASSESSMENT BILLING; REMEDIES; LIEN RIGHTS**

The Board may bill the annual Individual Assessments, including any Special Individual Assessments, provided under this Declaration in any manner as determined by the Board, including monthly, annual, or semi-annual billings. Each purchaser of a Unit acknowledges that the Individual Assessment for the master casualty policy, and if applicable, master liability policy to be obtained by the Association as set forth in Section 8 below shall be billed by the Board to each Owner of a Unit in a time frame sufficient to allow the Board to collect and pay the insurance premium prior to the expiration of the effective date of the master casualty insurance coverage, and if applicable, master liability coverage. The Board, in its discretion, may send a separate bill covering just the Individual Assessment for such master casualty insurance, and if applicable, master liability coverage. Individual Assessments under this Declaration, including any Special Individual Assessments, shall be due and payable at such time as determined by the Board but in any event shall be paid within fourteen (14) days of the date of the assessment invoice. The Board may assess late charges and penalties as are allowed in connection with Section 9 of this Declaration. The Association shall have all rights and remedies to enforce the provisions of this Declaration and to collect Individual Assessments hereunder, including Special Individual Assessments, as is available to the Association with respect to enforcing the provisions of any Assessments required under this Declaration, including but not limited to lien rights against each Unit of a Townhome Block. All provisions of this Declaration relating to rights and remedies of the Association are hereby incorporated by reference. The Individual Assessments due under this Declaration for maintenance and reserves shall be set by the Declarant for calendar year 2006 with the Individual Assessments for the master casualty insurance, and if applicable, master liability insurance being determined based on the actual cost of such insurance. Thereafter, the Board shall prepare a budget each year for the maintenance and management expenses on a Townhome Block basis, including the master casualty insurance, and if applicable, master liability insurance and reserves provided for herein

and shall follow the same procedures as followed under Section 9 of this Declaration with respect to the annual neighborhood budget. Amounts collected by the Association each year do not have to be spent and to the extent there are funds remaining at the end of each calendar year, such funds shall continue to be held by the Association for the benefit of the Units; provided, however, such funds shall be accounted for by the Association by Townhome Block.

## **ARTICLE 6. SHARED ROOF**

### **6.1 APPLICATION**

This Section shall apply to each Townhome in a Townhome Block.

### **6.2 REPLACEMENT**

The Association shall cause the entire roof to be replaced when any of the following shall occur:

6.2.1. A roof which is approaching its normal life expectancy (or which the Association deems to be defective) requires repair and the Association determines that it would be more efficient to replace the roof, or

6.2.1. A portion of the roof has been damaged by casualty, and the Association chooses to replace the roof under Section 8.4.

### **6.3. REPAIR**

For each Townhome Block, if the roof does not need to be replaced, but is allowing water leakage, or the Association otherwise determines that a roof requires repair, the Association shall make all necessary repairs. If the Association, after reasonable investigation, determines that a roof does not need to be repaired, the Owner of the Townhome directly underneath the damaged portion shall still have the right to make such repairs to the roof that such Owner deems necessary but at such Owner's expense and subject to architectural control provisions of Section 6.6 below.

### **6.4. CASUALTY**

For each Townhome Block, if the roof is damaged as a result of casualty, any Owner with knowledge thereof shall promptly notify the Association. If the Association is not immediately responsive, the Owners of the Townhomes directly under such damage shall take reasonable steps to obtain emergency bracing and temporary covering for the roof as necessary to protect the Owners' Townhomes and other Townhomes in the Townhome Block. The reasonable costs for such emergency actions shall be reimbursed to the Owners taking such actions by the Association from insurance proceeds, or from reserves for the applicable Townhome Block, or from Individual

Assessments against the Units in the applicable Townhome Block.

**6.5. PAYMENT OF REPAIRS OR REPLACEMENT**

For each Townhome Block, the cost of roof repair or replacement under Sections 6.2, 6.3, or 6.4 shall be paid first from any insurance proceeds and then from the reserve fund applicable to the Townhome Block. If the reserve fund is not sufficient to pay for the repair or replacement of a roof for a Townhome Block, then the Association shall levy a Special Individual Assessment on each Unit in the applicable Townhome Block to cover the cost.

**6.6. ARCHITECTURAL CONTROL**

Any repair or replacement of a roof (including outbuildings) with materials or style different from those originally approved must first be approved by Declarant or the Association in accordance with the applicable architectural review provisions.. No antenna, satellite dish or other structure may be erected on the roof unless approved in accordance with the architectural review provisions of the Master Declaration. Any such structure allowed to be placed on the roof must also be approved by the Association to assure that the roof will not be damaged.

**6.7. OWNER, ASSOCIATION RESPONSIBILITY**

Owners shall promptly report to the Association any water leakage in any Townhome.

**6.8. DAMAGE OR DESTRUCTION BY OWNER**

Notwithstanding any other provision of this Declaration, if any Owner or any of his/her guests, tenants, licensees, agents, employees or members of his/her family ("Responsible Owner") damages the roof of any Townhome as a result of negligence, misuse, or intentional act, the Owners of the affected Townhomes hereby authorize the Association to repair the damage. To the extent not covered by insurance, the cost of repair shall be the responsibility of the Responsible Owner and shall become an Individual Assessment against the Responsible Owner's Unit and payable by the Responsible Owner. The Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Responsible Owner shall be jointly and severally liable.

## **ARTICLE 7. OTHER MAINTENANCE AND REPAIRS**

### **7.1 EXTERIOR MAINTENANCE**

Unless the Board determines otherwise, the exterior wall surfaces and exterior trim of the primary building of the Townhomes within each Townhome Block shall be maintained by the Association as provided herein. Such maintenance by the Association shall include repair and replacement as necessary as determined by the Board and shall include the following: pressure washing or other cleaning, painting and/or staining of the exterior of the Townhomes as required from time to time; repairing, replacing, and caring for (i) roofs, guttering (if any), soffits, and fascia, (ii) all exterior building surfaces (including siding and trim but excluding glass surfaces, windows, screens, and doors), and (iii) standard mailboxes installed by Declarant, if any, and exterior post lights, if any, installed by Declarant (excluding electricity). The Owner of each Unit shall be solely responsible for maintaining, repairing, and replacing as necessary glass surfaces, windows (including caulking), doors (including caulking), screens, door hardware, and outside lighting, including the fixtures and light bulbs, attached to the Unit. In addition, the Owner of each Unit shall be solely responsible for maintaining, repairing, and replacing all detached outbuildings, including roofing, on the Owner's Unit and all fencing, if any, on the Unit. As circumstances dictate and based on experience, the Board may make rules altering the portions of the exterior of Townhomes to be maintained by the Association and the portions to be maintained by the Owner. If the primary building of a Townhome is damaged as a result of casualty, the Owner of the Townhome so damaged shall promptly notify the Association. The cost of repairs shall be paid first from any insurance proceeds and then from the reserve fund for the applicable Townhome Block. If the reserve fund is not sufficient to pay for the repair or replacement to the building, then the Association shall levy a Special Individual Assessment on each Unit within the applicable Townhome Block to cover the cost. To the extent that any Owner of a Unit defaults in such Owner's maintenance obligations as set forth above and fails to correct such default within fourteen (14) days of receipt of written notice of default from the Association, the Association may, in its sole discretion and in addition to any other rights and remedies available to the Association, access the applicable Unit to correct the default on behalf of such defaulting Owner and all costs incurred by the Association, together with interest at the rate of eighteen (18%) per annum shall be assessed by the Association as an Individual Assessment against the Owner in default.

### **7.2. OUTBUILDINGS**

All maintenance, repair and other services to outbuildings, including the roof of such outbuilding, that are separate from the primary Townhome and have a separate roof structure shall be performed by the Owner of the Unit on which such outbuildings are located.

**7.3. OWNERS' RIGHTS AND RESPONSIBILITIES**

Except as specifically otherwise provided in this Declaration or other recorded instrument, each Owner shall be responsible for and shall care for and maintain at the Owner's expense all or part of that Owner's property.

**7.4. DAMAGE BY OWNER**

Notwithstanding any other provision of this Declaration, if any Owner or any of his guests, tenants, licensees, agents, employees or members of his family ("Responsible Owner") damages the primary building of any Townhome as a result of negligence, misuse, or intentional act, the Owners of the affected Townhomes hereby authorize the Association to repair the damage, and, to the extent not covered by insurance, the cost of repair shall be the responsibility of the Responsible Owner and shall become an Individual Assessment against the Responsible Owner's Unit and payable by the Responsible Owner. The Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Responsible Owner shall be jointly and severally liable.

**7.5. PARTY WALLS**

Each wall which is built as a part of the original construction of the Townhomes on the Lots and placed on the dividing line between the Lots shall constitute a party wall. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to the 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, without the prior written consent of the adjoining Owner and the Development Review Board. If a party wall is damaged or destroyed by fire or other casualty, any Owner who shared the wall may restore it if the Association fails to so restore the party wall from insurance proceeds in a reasonable period of time after written demand by such Owner. Upon such restoration by the Owner, such Owner shall be entitled to reimbursement from the Association to the extent of any insurance proceeds received by the Association relating to such damage or from reserves for the applicable Townhome Block or from Individual Assessments against Units in the applicable Townhome Block. Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the entire cost of repairing and furnishing the necessary protection against such elements to the extent not covered by insurance.

## **ARTICLE 8. INSURANCE; CASUALTY**

**BKA 593PG205**

### **8.1. PURCHASE BY ASSOCIATION**

The Association shall contract for master casualty insurance for each Townhome Block (although each Townhome Block need not have a separate policy and more than one Townhome Block may be insured under a single policy) for coverage for fire and other hazards commonly insured under an "all-risk" policy, if such all-risk coverage is reasonably available, including vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, the Association will obtain at a minimum fire and extended coverage. In the sole discretion of the Board, the Board may also obtain an umbrella Townhomes liability policy covering the Townhome Units in each Townhome Block if the Board determines such coverage by a master policy to be desirable. As provided in Section 8.3 below, each Owner of a Unit shall be primarily responsible for obtaining general liability insurance covering the Owner's Lot and the dwelling thereon. Notwithstanding the foregoing, neither the Board nor the Association shall have any liability to the Owners of the Units for the amounts or types of coverages obtained by the Association, levels of deductibles, or any other matters relating to the casualty insurance obtained, or if applicable, liability insurance. The Association shall assess the cost for all such insurance obtained for the benefit of the Units within each Townhome Block as an Individual Assessment in accordance with Sections 5.11.3 and 5.13.

### **8.2. INSUFFICIENT SUMS FOR MASTER CASUALTY AND/OR MASTER TOWNHOMES LIABILITY INSURANCE**

If there are insufficient funds available to the Association to acquire the master casualty insurance and/or, if applicable, master liability insurance as set forth above for a Townhome Block because of failure of one or more Owners in such Townhome Block to timely pay Assessments hereunder when due, the Association may, in its sole discretion, in addition to any other remedies available to the Association, borrow from reserves for such applicable Townhome Block to purchase such insurance until such time as the Owner pays the Assessments due or the Association may, in its sole discretion, seek to obtain individual insurance on each Townhome in the applicable Townhome Block excluding, however, the Townhome owned by the Owner delinquent with the Assessment until such time as the overdue Assessments are paid.

### **8.3. OWNER'S INSURANCE**

The Association shall furnish each Owner with a copy of the master casualty policy covering the applicable Townhome Block for the Owner's Unit, and if applicable, a copy of the master liability policy. Even though the Association will contract for casualty

insurance, it shall be the responsibility of the Owner of each Unit to review the extent of the coverages provided in the policy obtained by the Association and to obtain individual coverage for any additional coverage as such Owner may want, may deem as necessary, or as may be required by such Owner's mortgage lender. Insurance obtained by the Association may not include liability coverage, may have significant deductibles, and may not include furnishings and other contents, or wall and floor coverings or certain fixtures, cabinetry or appliances. The Association shall have no obligation to obtain coverage for personal property or interior surfaces in each Townhome, including but not limited to, furnishings, other contents, wall and floor coverings, fixtures, cabinetry, and appliances. Unless and to the extent otherwise covered in the casualty policy obtained by the Association, if at all, the Owner of each Unit will be responsible for obtaining casualty insurance for all personal and other property in the Owner's Townhome, including but not limited to furnishings, other contents, wall and floor coverings, fixtures, cabinetry, and appliances. The Owner of each Unit shall also have sole responsibility for obtaining any special coverages desired by such Owner, such as coverages for theft or other damage or destruction of jewelry, silver, audio equipment, televisions, or computer equipment. In addition, each Owner of a Unit shall obtain all-risk casualty insurance on the building and roof of any detached garage or other detached improvements of the Unit, including, if available, on fencing on the Unit. To the extent the Association does not obtain a master liability policy for the Units in each Townhome Block, each Owner of a Lot shall be required to obtain general liability coverage for his/her Unit in such amounts as established by the Board and to furnish the Board with evidence of such coverage within ten (10) days of request.

#### **8.4. CASUALTY LOSS**

a. Damage to a Townhome roof and/or other exterior areas of the building shall be reported immediately to the Association by any Owner with knowledge thereof. If necessary to preserve the structural integrity of other Townhomes, the Owner of the damaged Townhome shall provide emergency bracing, protection from water intrusion or other necessary temporary repairs and may seek reimbursement from the Association as provided above.

b. As soon as reasonably possible after notification to the Association of damage or destruction by fire or other casualty to all or any portion of any Townhome in a Townhome Block covered by master casualty insurance obtained by the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Except as provided below, any such damage or destruction to any Townhome in a Townhome Block covered by master casualty insurance obtained by the Association shall be repaired or reconstructed by the Association within a reasonable period of time after receipt of the insurance proceeds by the Association. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any

changes or improvements necessitated by changes in applicable building codes.

c. If all or substantially all of any Townhome Block covered by master casualty insurance obtained by the Association is damaged or destroyed, such damage or destruction shall be repaired or reconstructed by the Association within a reasonable period of time after receipt of the insurance proceeds by the Association unless, within sixty (60) days after the casualty, at least (75%) of the Owners of the Units in the applicable Townhome Block vote not to repair or rebuild. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association and the applicable Owners within such 60-day period, then the 60-day period shall be extended until such information shall be made available; provided, however, such extension shall not exceed a reasonable period of time. If at least (75%) of the Owners of the Townhomes in the applicable Townhome Block vote not to repair or rebuild, the Association shall use the insurance proceeds to remove any debris and to restore the applicable Lots to a clean and vacant condition. The remaining insurance proceeds shall then be distributed to the applicable mortgage holders and/or Owners of the affected Units in the applicable Townhome Block in the same ratio as set forth in Section 5.11.3 above. Repair or reconstruction as used herein shall have the same meaning as in Section 5.11.2 above. No mortgagee of any Unit shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed unless such mortgagee has become record owner of such Unit.

d. If repair or reconstruction is to be done by the Association but the insurance proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Owner's of the Units, levy a Special Individual Assessment against each of the Owners of Townhomes in an applicable Townhome Block requiring repair. Such Special Individual Assessment may be made in like manner by the Association at any time, whether before, during, or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction, such excess shall be deposited to the reserves for the benefit of the Townhomes in the applicable Townhome Block.

#### **8.5. APPOINTMENT OF TRUSTEE FOR FUNDS**

The Board of Directors may, at its discretion, retain any bank, trust company or South Carolina law firm to act as trustee, agent or depository on its behalf for the purpose of receiving or distributing any insurance proceeds. The fees and reimbursable expenses of any trustee or agent shall be a Common Expense.

#### **8.6. RECONSTRUCTION OF THE PROPERTY**

The insurance proceeds for casualty losses (after payment of any applicable fees and reimbursable expenses of any trustee, attorney or consultant advising the trustee or



the Association regarding insurance matters) shall be applied by the Board of Directors on behalf of the Association for the reconstruction or restoration of the damaged property; provided, however, if such proceeds are inadequate to reconstruct or restore the damaged property, the Board of Trustees may pursue such other options as it may determine are reasonable under the circumstances.

## **ARTICLE 9. ASSESSMENTS AND CHARGES**

### **9.1. REGULAR ASSESSMENTS AND BUDGET**

Regular Assessments shall be computed and assessed against all Units as follows:

#### **9.1.1. Fiscal Year and Annual Budget**

The fiscal year of the Association shall be the calendar year. Unless otherwise determined by the Board of Directors, the Board of Directors shall prepare or cause to be prepared by December 1 an operating budget (the "Budget") for the next fiscal year setting forth the estimated Common Expenses and anticipated revenues of the Association for such fiscal year, and any projected deficit or surplus from the preceding fiscal year. The Budget, once approved by the Board of Directors, shall serve as the basis for assessments to all Owners (the "Total Assessments") for such fiscal year and the primary guideline under which the Association shall be projected to be operated during such fiscal year. If the Board fails for any reason to adopt a Budget for the fiscal year, then until such time as it is adopted, the Budget and Total Assessments in effect for the current year shall automatically be increased effective the first day of the fiscal year in the same proportion as any percentage increase of the then current calendar year over the preceding calendar year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items), or its successor index, as determined by the Board of Directors. Such adjusted Budget shall be the Budget for the succeeding year, until a new Budget is adopted. Within ninety (90) days following the close of the Association's fiscal year, the Board of Directors shall cause an unaudited or audited financial statement, as the Board shall determine, of the Association (the "Annual Report") to be prepared by a public accountant licensed to practice in the State of South Carolina. Upon request, a copy of the Annual Report shall be provided to any Owner of any Unit which is subject to Assessments.

#### **9.1.2. Determining the Budget**

The Budget and the Total Assessments shall be based upon annual estimates by the Board of Directors of the Association's revenues and its cash requirements to pay all estimated expenses and costs arising out of or connected with the use, maintenance and operation of the Common Area and Area of Common Responsibility and the operation of the Association. Such estimated expenses and costs may include, among other things, the following: expenses of management, including

compensation of any Management Agent; taxes and special assessments; insurance premiums; repairs and maintenance; wages and personnel expenses for Association employees; utility charges (including monthly charges for street lighting services, as prescribed by the South Carolina Public Service Commission or any successor agency); legal and accounting fees; any deficit remaining from a previous period; creation of one or more reasonable contingency reserves and/or sinking funds; any principal and interest payments due for debts of the Association; and any other expenses, costs and existing or projected liabilities which may be incurred by the Association for the benefit of the Owners pursuant to this Declaration. Such expenses and costs shall constitute the Common Expenses.

### 9.1.3. Allocating Assessments

The allocation of Assessments is determined by whether the Unit is unimproved (Lot) or is improved (Townhome Unit). The Owner of each Townhome Unit shall pay one (1) Assessment Share, as defined in Section 9.1.4., below. For Assessment purposes, a Townhome Unit shall be deemed to exist on the first day of the first month following the month in which a certificate of occupancy is issued for the Unit by the applicable regulatory authority. The Owner of each platted Lot shall pay one half (1/2) of one (1) Assessment Share until such time as a Townhome exists on the Lot, as defined in the preceding sentence.

### 9.1.4. Calculating Assessments

To determine the number of Assessment Shares and the allocable Assessment for each type of Unit for the fiscal year, the Board of Directors shall:

a. Determine the total number of Townhome Units existing at the beginning of the applicable fiscal year of the Association. This total is the "Assessed Townhome Units." Multiply the number of Assessed Townhome Units by one (1).

b. Determine the total number of Lots existing at the beginning of the applicable fiscal year of the Association. This total is the "Assessed Lots." Divide the number of Lots by two (2).

c. Add the Assessed Townhome Units and the Assessed Lots. This constitutes the "Total Assessment Shares".

d. Divide the Total Assessments required for the fiscal year by the Total Assessment Shares to determine the amount of one (1) Assessment Share. Each Townhome Unit will pay one (1) Assessment Share. Each Lot will pay one half (1/2) of one (1) Assessment Share.

**Example:** Assume that (i) the Budget of the Association for the forthcoming fiscal year is \$3,000; (ii) there are currently 15 Townhome

Units, and (iii) there are currently 30 Lots. The Total Assessment Shares are (i) 15 for Townhome Units, plus (ii) 15 for Lots (30 Lots divided by 2, or 15). There are 30 Total Assessment Shares (15 plus 15). Thus, each Assessment Share for the year is \$3,000 divided by the number of Total Assessment Shares (30), or \$100 per Assessment Share. The Owner of a Townhome Unit would pay \$100. The Owner of a Lot would pay \$50 (\$100 divided by 2).

NOTE: The Assessment calculations shown provide a mathematical example only. They are not intended to be estimates of the actual Assessment that may be applicable from time to time.

**9.1.5. Assessments for Units Not Existing at Beginning of Fiscal**

**Year**

If a Townhome Unit is created after the beginning of the fiscal year, then the applicable Assessment for such Unit shall be pro-rated and shall be payable for the balance of the current fiscal year beginning on the first day of the first month following the month in which a certificate of occupancy is issued for the Unit by the applicable regulatory authority.

**9.1.6. Assessments for Units Owned by Declarant**

Declarant and Affiliates of Declarant shall pay Assessments on Units owned by them in the same manner as other Unit Owners; provided, however, that the Declarant may elect, in lieu of paying Assessments, to contribute to the Association from time to time such funds as may be required to offset any operating deficit of the Association that exists after subtracting Common Expenses incurred during the year from Assessments and other revenues received during the year. Unless the Declarant notifies the Association otherwise by March 1 of the applicable fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the preceding fiscal year.

**9.1.7. Notice and Payment of Assessments**

**9.1.7.1. Notice**

Unless the Board of Directors elects a shorter payment period, the Assessments shall be due on a calendar year basis in advance. Unless otherwise determined by the Board of Directors, the Association shall, by December 15, furnish to each Owner a copy of the Budget for the forthcoming fiscal year and a statement of the amount of the Assessment payable by such Owner.

**9.1.7.2. Payment**

Unless otherwise expressly approved by the Board of Directors,

Assessments shall be payable by the later of (i) the tenth (10th) day of January in the calendar year to which the Assessment is applicable or (ii) fourteen (14) days after notice of such Assessment shall have been given to the Owner in accordance with Section 9.1.7.1.

**9.1.8. Cap on Regular Assessments; Declarant Subsidy**

The maximum annual Regular Assessment Share shall not exceed \$4800.00; provided, however, that such maximum amount that may be assessed shall automatically be increased effective the first day of each fiscal year by an amount that equals the percentage increase of the CPI during the most recent full calendar year over the CPI for the preceding calendar year. "CPI" means the Consumer Price Index (All Urban Consumers, United States City Average, All Items), or its successor index, as determined by the Board of Directors. If the Assessment is not actually increased by the maximum amount in any year, this shall not preclude including the maximum amount in calculating the maximum amount of Assessment in a subsequent year.

**9.2. SPECIAL ASSESSMENTS**

In addition to the Regular Assessments authorized above, the Board of Directors may levy one or more Special Assessments that cumulatively do not exceed five hundred dollars (\$500.00) per Assessment Share during any fiscal year. The maximum Special Assessment shall be adjusted annually, however, in the same manner as for Regular Assessments, as set forth in Section 9.1, above. In addition, the Board of Directors may levy one or more Special Assessments to cover the cost of any unbudgeted property taxes or assessments, any uninsured loss or claim, or, in the event of an insured loss or event, any deductible amount under the insuring policy. Any other Special Assessment levied by the Board of Directors shall have the approval of Units representing a majority of the Total Assessment Shares, as determined in Section 9.1.4. Meetings of Owners for the special purpose of considering a Special Assessment shall be held only after written notice by the Association to the Owners, in accordance with the notice procedure set forth in this Declaration. The meeting shall occur no earlier than seven (7) days after the date of mailing or delivery. The notice shall state generally the purpose and amount of the proposed Special Assessment. Owners may be represented at such meetings by written proxy, which proxy may be held by any Person. Special Assessments shall be allocated among Units in the same manner as other Assessments. Special Assessments shall be payable by the date determined by the Board of Directors, but no earlier than fourteen (14) days after notice of such Assessment shall have been given to the Owner. This Section 9.2 shall not apply to Special Individual Assessments.

**9.3. INDIVIDUAL ASSESSMENTS**

In addition to the Regular and Special Assessments authorized above, the Board of Directors may levy Individual Assessments, including Special Individual Assessments, against a particular Unit for purposes of defraying the costs of any

special services to that Unit in accordance with Section 5 herein.

**9.4. EFFECT OF NON-PAYMENT OF ASSESSMENTS**

Any Assessment that is not paid to the Association when due by an Owner shall be delinquent. All delinquent Assessments shall incur an administrative charge of \$10.00 per month or any portion of any month from the date each such installment is due until such payment is received by the Association, in addition to any interest charges which may be payable. No Owner may waive or otherwise escape liability of the Assessments provided for herein by non-use of the Common Areas, or abandonment of his Unit.

**9.5. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS**

Assessments, including Regular, Special, and Individual Assessments, interest and charges thereon, and costs of collection thereof (including reasonable attorneys' fees and expenses) shall be (i) the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment fell due and, unless expressly agreed by the Board of Directors of the Association, also of any subsequent Owner, (ii) a charge on the Unit to which such Assessments are applicable and (iii) a continuing lien upon each Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Section, the Association may prepare a written notice of lien setting forth the amount of the unpaid Assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or any Managing Agent of the Association and may be recorded in the office of the Register of Mesne Conveyances for Charleston County. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced as set forth in Section 5.13.

**9.6. SUBORDINATION OF THE LIEN**

The lien of the Assessments provided for herein shall be subordinate to the lien of any unpaid taxes and any recorded mortgage on the applicable Unit. Sale or transfer of any Unit shall not affect the lien of the Assessments. However, the sale or transfer of any Unit which is subject to any recorded mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding or conveyance in lieu of foreclosure thereof, shall extinguish the lien of the Assessments as to payment thereof, which became due prior to such sale or transfer. No sale or transfer shall relieve the Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

**9.7. ATTORNEYS' FEES AND COSTS**

In any suit or action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the Bylaws, the Declarant or the Association shall be entitled to recover from any other party to the suit or action which is subject to this Declaration its costs and disbursements and reasonable attorneys' fees and expenses in such suit or action and any appeal thereof.

**9.8. STATEMENT OF ACCOUNT**

Upon payment of a reasonable fee determined by the Board of Directors, and upon written request of any Owner, mortgagee, lessee, prospective mortgagee, or prospective purchaser or lessee of a Unit, the Association shall issue a written statement (which shall be conclusive upon the Association) setting forth the following:

- a. The amount of unpaid Assessments, if any, applicable to such Unit.
- b. The amount of the current annual Regular Assessment and Individual Assessment, and any current Special Assessment, applicable to such Unit and the date or dates upon which payment thereof shall become due.
- c. The amount of any credit for advance payments of annual Assessments.

**9.9. MECHANIC'S LIENS**

The Board of Directors may cause to be discharged any mechanic's lien or other encumbrance which, in the opinion of the Board of Directors, may constitute a lien against the Common Areas. If less than all of the Owners are responsible for the existence of said lien, the Owners responsible, as determined by the Board of Directors, shall be jointly and severally liable for the amount necessary to discharge the same, and for all related costs and expenses, including attorney's fees and court costs, incurred by reason of the lien.

**9.10. NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION**

Any Assessment which is not paid when due by an Owner to the Association shall be delinquent. Thereupon, the Association may bring an action at law against the delinquent Owner personally for its collection, or foreclose the lien against the delinquent Owner's Unit in the same manner in which a mortgage on real property may be foreclosed in the State of South Carolina. The Association shall have the right to bid in at any foreclosure sale, and, upon conveyance to the Association, thereafter hold, lease, mortgage, or convey the subject Unit.

**9.11. WORKING CAPITAL ASSESSMENT**

Each new Owner of a Unit other than Declarant, or an Affiliate of Declarant, or Lennar, shall pay to the Association a "Working Capital Assessment" in the amount of Three Hundred and no/100 (\$300.00) Dollars per Unit concurrently with the closing of the conveyance of the Unit to a new Owner. The Working Capital Assessment shall be in addition to, and not in lieu of, any Regular, Special or Individual Assessments for the Unit provided for pursuant to this Declaration, and shall not be considered an advance payment or portion thereof. The Working Capital Assessment shall not be applicable to (a) a conveyance of a Unit for which no deed recording fee is payable under South Carolina law, or (b) such other exceptions as the Board of Directors of the Association shall approve in writing, in its sole discretion. Sections 9.4 through 9.10 herein shall apply to Working Capital Assessments.

**ARTICLE 10. TOWNHOME ADVISORY PARTIES**

The Board may in its sole discretion establish an advisory committee made up of one or more of the Owners. Such committee may be requested from time to time by the Board to furnish information to the Board as the Board requests, including information concerning the services to be provided hereunder.

**ARTICLE 11. MISCELLANEOUS**

**11.1. REQUIREMENT FOR SUFFICIENT FUNDS**

Notwithstanding any other provision of this Declaration, the Association will only be required to furnish services hereunder to the extent the Owners of the Townhome Units in each Townhome Block have paid assessments sufficient for such services. The Association under no circumstance will be required to perform any service, including obtaining insurance, until such time as sufficient funds are available.

**11.2. DURATION**

All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of Declarant for a period of twenty (20) years from the execution of this Declaration. After the initial twenty (20) year period of duration, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by ninety (90%) percent of the then Owners of the Units, has been recorded, agreeing to change said Covenants in whole or in part. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last

survivor of the now living descendants of Elizabeth II, Queen of England.

**11.3. AMENDMENT**

This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision of this Declaration into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on all or any part of the Units subject to this Declaration, (iv) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration or is necessary to clarify any provision of this Declaration, or (v) if such amendment does not materially adversely affect any existing Owner's rights under this Declaration and/or adversely affect the title to any existing Owner's Unit. This Declaration may also be amended at any time from time to time by the affirmative vote of the Owners of at least seventy five (75%) percent of the Units; provided, however, such amendment shall not be effective unless also signed by the Declarant.

**ARTICLE 12. CONDEMNATION OF COMMON AREAS**

Whenever any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association. If the portion of the Common Areas so taken or conveyed was improved in any way, then the Association shall repair, rebuild, replace or renovate the improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available thereof, in accordance with plans approved by the Board of Directors. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and, in the opinion of the Board of Directors, such deficiency cannot or should not be funded from a reserve fund or Regular Assessments, the Board of Directors may levy a Special Assessment against all Units in accordance with the procedure set forth in Section 9.2.

**ARTICLE 13. GENERAL PROVISIONS**

**13.1. INTERPRETATION**

This Declaration shall be construed in accordance with the laws of the State of South Carolina. 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 Declarant or the Board of Directors, 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 captions herein as to the contents of various portions of the Declaration are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular provisions to which they refer. The effective date of this Declaration shall be the date of its filing for record in the office of the Register of Mesne Conveyances for Charleston County, South Carolina.

**13.2. 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 provisions hereof apply either to corporations, partnerships, limited liability companies or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**13.3. SEVERABILITY**

The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of a Unit, and may not be severed or alienated from such ownership. 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 this 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 provisions which can reasonably be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

**13.4. RIGHTS OF THIRD PARTIES**

This Declaration shall be recorded for the benefit of Declarant, Owners, the Association, and their mortgagees, and by such recording, no other Person, including any adjoining property owner, shall have any right, title or interest whatsoever in the Property except as expressly provided herein, or in the operation of the Association or the Common Areas or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant and mortgagees herein provided.

**13.5. NOTICE OF SALE, LEASE OR MORTGAGE**

If an Owner sells, leases, mortgages, or otherwise disposes of any Unit, the transferring Owner shall promptly furnish to the Association, in writing, the name and address of such purchaser, lessee, mortgagee, or transferee.

**13.6. NOTICES**

**BKA 593PG217**

Notices required hereunder shall be deemed given when in writing and delivered by (a) hand, (b) private carrier that provides evidence of delivery, with delivery charges prepaid, (c) facsimile, in which event receipt shall be the date of confirmation of receipt, (d) if the address is within the United States, five (5) calendar days after being deposited in the United States Mail, First Class, postage prepaid, or (e) registered or certified mail, return receipt requested, in which event receipt shall be the date the receipt is signed. All notices to Owners shall be delivered or sent to such addresses or facsimile telephone numbers as have been provided in writing to the Association, or if no address has been provided, then at the address of any completed Residential Unit owned by such Owner, or at the address then shown as that of the Owner on the property tax records of Charleston County.

All notices to the Association shall be delivered or sent in care of the Association at:

c/o Kensington at Park West Association, Inc.  
2000 Center Point Lane, Suite 2100, Columbia, SC 29210

or to such other address as the Association may from time to time notify the Owners and the Declarant.

All notices to Declarant shall be delivered or sent in care of Declarant at:

c/o Park West Development, Inc.  
2000 Center Point Lane, Suite 2100, Columbia, SC 29210

or to such other address as Declarant may from time to time notify the Association. Notices to mortgagees shall be delivered or sent to such addresses as such mortgagees specify in writing to the Association.

**13.7. SUCCESSORS AND ASSIGNS**

Except where expressly stated to the contrary and without the necessity of separately so stating at every reference herein, all provisions herein shall be binding upon and inure to the benefit of the Declarant, the Association, and Owners and their respective heirs, legal representatives, successors, assigns and successors in title.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**OKA 593PG218**

All those certain pieces, parcels, or lots of land, together with the improvements thereon, if any, situate, lying, and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, shown and designated as LOTS 1 through 11, inclusive, and 37 through 45, inclusive, "OPEN SPACE 30.849 sq. ft. 0.708 acres", "OPEN SPACE 19,047 sq. ft. 0.437 acres" and "WETLAND BUFFER 21,803 sq. ft. 0.501 acres", on a plat entitled, "A CONDITIONAL SUBDIVISION PLAT OF KENSINGTON PHASE I PORTION OF PARCEL 51 A, OWNED BY PARK WEST DEVELOPMENT, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Southeastern Surveying of Charleston, Inc., dated November 17, 2004, and recorded December 23, 2004, in the RMC Office for Charleston County in Plat Book EH at Page 580.

Said pieces, parcels and lots having such size, shape, dimensions, and boundaries as will by reference to said plat more fully appear.

T.M.S. No.: Portion of 540-00-00-112

ALSO:

All those certain pieces, parcels, or lots of land, together with the improvements thereon, if any, situate, lying, and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, being shown and designated as **Lots 12 through 36, inclusive**, and "**OPEN SPACE 72,372 SF 1.661 AC**" and "**WETLAND BUFFER 56,627 SF 1.300 AC**" on a plat entitled, "A CONDITIONAL PLAT OF KENSINGTON, PHASE II PORTION OF PARCEL 51 A, PARK WEST DEVELOPMENT, INC., LOCATED IN THE TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Southeastern Surveying of Charleston, Inc., dated September 2, 2005, and recorded in the RMC Office for Charleston County in Plat Book EJ at Page 240. Said pieces, parcels, and lots having such size, shape, dimensions, and boundaries as will by reference to said plat more fully appear.

<b>T.M.S. Nos.:</b>	Lot 12:	594-13-00-157
	Lot 13:	594-13-00-158
	Lot 14:	594-13-00-159
	Lot 15:	594-13-00-160
	Lot 16:	594-13-00-161
	Lot 17:	594-13-00-162
	Lot 18:	594-13-00-163
	Lot 19:	594-13-00-164
	Lot 20:	594-13-00-165
	Lot 21:	594-13-00-166
	Lot 22:	594-13-00-167
	Lot 23:	594-13-00-168

Lot 24: 594-13-00-169  
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**BKA 593PG219**

**EXHIBIT B**

**OKA 593PG220**

**BYLAWS OF**

**TOWNHOMES OF KENSINGTON AT PARK WEST ASSOCIATION, INC.**

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**BYLAWS OF  
TOWNHOMES OF KENSINGTON AT PARK WEST ASSOCIATION, INC.**

A South Carolina Nonprofit Mutual Benefit Corporation

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act, the Board of Directors of Townhomes of Kensington at Park West Association, Inc., a South Carolina nonprofit mutual benefit corporation, has adopted the following Bylaws for such corporation.

**1. NAME AND PRINCIPAL OFFICE**

**1.1. *Name of Corporation.***

The name of the nonprofit corporation is "Townhomes of Kensington at Park West Association, Inc.", hereinafter referred to as the "Association".

**1.2. *Location of Offices.***

The principal offices of the Association shall be in South Carolina.

**2. DEFINITIONS USED IN BYLAWS**

**2.1. *Definitions Used In Bylaws.***

Except as otherwise provided herein or required by the context hereof, all capitalized terms used herein and defined in the Declaration of Covenants, Conditions and Restrictions for Townhomes at Kensington at Park West Association, Inc. recorded in the office of the Register of Mesne Conveyances for Charleston County concurrently with these Bylaws, and all amendments or Supplemental Declarations thereto filed for record from time to time in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina (hereinafter referred to as the "Declaration"), shall have such defined meanings when used in these Bylaws.

**3. MEMBERSHIP IN ASSOCIATION**

**3.1. *Association; No Members.***

The Association is a mutual benefit non-profit corporation, without members, under the South Carolina Nonprofit Corporation Act, SC Code Section 33-31-10 et seq. (the "Act"). Because of the authority vested in the Board of Directors, the rights and

authority of Owners are limited to the extent set forth in the Declaration and these Bylaws, and the term "Owner" as used herein is not synonymous with the term "member" as set forth in the Act.

**3.2. Notice of Ownership.**

In order to confirm ownership, upon purchasing property at Park West that is subject to the Declaration, the Owner of such property shall promptly furnish or cause to be furnished to the Association a legible copy of the instrument conveying ownership to the Owner, which copy shall be maintained in the records of the Association.

**3.3. Voting by Owners.**

The Owners of each Unit shall be assigned one (1) vote for each Regular Assessment paid in connection therewith, and if any fractional votes should ever occur, such shall be rounded up to a whole vote. Each Unit Owner shall be assigned one vote for each Regular Assessment paid in connection therewith, and in the event the Board determines to assess less than one (1) Regular Assessment in accordance with the provisions of Article IX of the Declaration, each Lot Owner shall still be entitled to one (1) vote. For example, if the Board assesses a Lot Owner one half (½) of a Regular Assessment, such Lot Owner would be entitled to one (1) vote.

**3.4. Authority of Person Voting.**

The Board shall have the authority to determine, in its sole discretion, whether any person claiming to have authority to vote on behalf of an Owner has such authority. If the Owner is a corporation, partnership, limited liability company, trust, or similar entity, the Association may require the person purporting to vote on behalf of such Owner to provide reasonable evidence that such person (the "Representative") has authority to vote for such Owner. Unless the authority of the Representative is challenged in writing at or before the time of voting, or is challenged orally at the time of voting, the Association may accept such Representative as a person authorized to vote for such Owner, regardless of whether evidence of such authority is provided. When more than one person holds an interest in any Unit, all such persons shall be Owners. However, the number of votes for that Unit shall not be increased, and the Owners must determine among themselves how the Unit's vote may be exercised. If allowed by the Board, an Owner may by written agreement, in the form and in accordance with any rules or other requirements of the Board, appoint a tenant to exercise a Unit's voting rights. Such assignment may expire after a specified term and in any case may be revoked by the Owner by delivery to the Board of a signed revocation.

**4. BOARD OF DIRECTORS**

**4.1. General Powers of Board.**

The Board of Directors shall manage the property, affairs, and business of the



Association. The Board may exercise all of the powers of the Association, whether derived from law, the Declaration, the Articles of Incorporation, the Rules and Regulations, or these Bylaws, except such powers as are expressly vested in another Person by such sources. As more specifically set forth in the Declaration, the Board shall constitute the final administrative authority of the Association, and all decisions of the Board shall be binding upon the Association. The Board may by written contract delegate, in whole or in part, to a Management Agent, such of its duties, responsibilities, function, and powers, or those of any officer, as it determines are appropriate.

**4.2. Number, Tenure, and Qualifications.**

4.2.1 For so long as Declarant owns a Controlling Interest, the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as designated by Declarant from time-to-time. Such Directors need not be Owners.

4.2.2. At such time as the Declarant no longer owns a Controlling Interest, or such earlier time as the Declarant records a Supplemental Declaration waiving its authority to designate the Board, the successor Board shall be selected as follows:

A. The successor Board shall consist of five (5) Persons. It is not necessary that a Director be an Owner. The current Board of the Association shall constitute a Nominating Committee to nominate competent and responsible Persons to serve as Directors of the Association. The President or Secretary of the Association shall cause notice to be given to all Owners that a meeting shall be held at a designated time and place in Charleston County not earlier than seven (7) days after the date such notice is given for election of Directors. The notice shall contain the names of those persons recommended by the Nominating Committee, but shall note that Owners may make other nominations at the meeting.

B. At the meeting and each subsequent election of Directors, each Owner shall be entitled to cast, personally or by written proxy in form approved by the then-existing Board, such votes as are permitted by Section 3.3.

C. After giving the Owners (or proxy holders) attending such meeting the opportunity to nominate other Persons, with a second by another Owner or proxy holder, the Directors shall be elected by written secret ballot. Each Owner shall be authorized to cast as many votes as the number of Directors to be elected. (**Example:** If five Directors are being elected, then the Owner may vote for five nominees. If the Owner owns two or more Units, then the Owner may cast the number of votes assigned to such Units for five nominees.) Those nominated Persons receiving the highest number of votes shall be the Directors.

D. In subsequent elections for Directors, the same procedure as set forth

above shall be followed.

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**4.3. Annual and Regular Meetings.**

The first meeting of the Board of Directors shall be held within one (1) year from the date of incorporation of the Association. Subsequent annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year, provided that the date for such annual meeting may be deferred by the Board of Directors. Regular meetings of the Board of Directors shall be held on such dates as the Board of Directors may determine.

**4.4. Special Meetings.**

Special meetings of the Board may be called by or at the request of two Directors, or if there are only two Directors, then any Director. The Director(s) calling a special meeting of the Board may fix any place within Charleston County, South Carolina (or such other place as is approved by all Directors) as the place for holding such a meeting. Except as otherwise required or permitted by the South Carolina Nonprofit Corporation Act, notice of any special meetings shall be given at least two (2) days prior thereto. Notice shall be in accordance with the procedure set forth in Section 10.1, provided that notice may also be given by facsimile transmission if the Director given such notice has provided a facsimile number to the Association and the sender receives a written electronic receipt or other written confirmation of receipt. Any Director may waive notice of a meeting by doing so in writing.

**4.5. Quorum, Telephonic Meetings and Manner of Acting.**

A majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. Upon approval of a majority of the Board, a meeting may be conducted by any electronic means that permits all participating Directors to communicate simultaneously (such as a telephone conference call). The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board and individual Directors shall have no powers as such. A majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board and individual Directors shall have no powers as such.

**4.6. Compensation of Directors.**

No Director shall receive compensation for any services that he may render to the Association as a Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the

Association other than in their capacities as Directors.

**BKA 593PG226**

**4.7. Resignation and Removal.**

A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time for or without cause, by proper action of the Person(s) having the right to designate or elect Directors at the time of removal (see Sections 4.2.1 and 4.2.2, above).

**4.8. Vacancies in the Board.**

If a vacancy occurs in the Board by reason of the death or resignation of a Director, then such vacancy shall be filled by vote of the remaining Directors. If a vacancy occurs in the Board by reason of removal, then such vacancy shall be filled solely by vote of the Person(s) then having the right to designate or elect Directors (i.e. by the Declarant or the Owners, as set forth in Sections 4.2.1 and 4.2.2, above). Any Director designated or appointed to fill a vacancy shall serve for the unexpired term of his predecessor.

**4.9. Informal Action by Directors.**

Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

**5. OFFICERS OF ASSOCIATION**

**5.1. Types of Officers.**

The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as the Board may from time to time appoint.

**5.2. Election, Tenure, and Qualifications.**

The officers of the Association shall be chosen by the Board at the regular annual meeting of the Board. In the event of failure to choose officers at such regular annual meeting of the Board, officers may be chosen at any subsequent regular or special meeting of the Board. Each officer (whether chosen at a regular annual meeting of the Board or otherwise) shall hold his office until his successor shall have been chosen and qualified, or until his death, or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one individual may hold two or more of such offices, except that the President may not also be the Secretary or the Treasurer. No individual holding two or more offices shall act in or execute any

instrument in the capacity of more than one office. It is not necessary that an officer be a Director or an Owner.

**5.3. Subordinate Officers and Agents.**

The Board may from time to time appoint such other officers or agents as it deems advisable, each of whom shall have such title, hold office for such periods, have such authority, and perform such duties as the Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. It is not necessary that a subordinate officer or agent be a Director or an Owner.

**5.4. Resignation and Removal.**

Any officer may resign at any time by delivering a written resignation to the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board at any time, for or without cause.

**5.5. Vacancies and Newly Created Offices.**

If any vacancies shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular special meeting.

**5.6. Duties of the President.**

The President shall preside at meetings of the Board and at meetings of Owners called by the Association. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board may require of him; provided that the Board may authorize other officers or Persons to act on specific matters by proper resolution of the Board.

**5.7. Duties of the Vice President.**

The Vice President shall preside in the absence of the President and shall do and perform all other acts and things that the Board may require of him.

**5.8. Duties of the Secretary.**

The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board may require him to keep. He shall be the custodian of the seal of the Association, if any, and

shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board may require of him.

**5.9. Duties of the Treasurer.**

The Treasurer shall have custody and control of the funds of the Association, subject to the action of the Board, and shall, when requested by the President or the Board to do so, report the state of the finances of the Association. He shall perform such other duties as the Board may require of him.

**5.10. Compensation of Officers.**

No officer shall receive compensation for any services that he may render to the Association as an officer; provided further, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be additionally compensated for services rendered to the Association other than in their capacities as officers.

**6. COMMITTEES OF ASSOCIATION**

**6.1. Designation of Committees.**

The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall consist of such number as the Board shall determine. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and (except as otherwise provided by these Bylaws) may be compensated for services rendered to the Association other than in their capacities as committee members. It is not necessary that a committee member be a Director, an officer of the Association or an Owner.

**6.2. Proceedings of Committees.**

Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board. Unless expressly delegated to the committee by the Board, the power and authority of each committee shall only be to make recommendations to the Board, which shall have the final decision whether to take any action or not.

**6.3. Quorum and Manner of Acting.**

At each meeting of any committee designated hereunder by the Board, the presence of committee members constituting at least a majority of the authorized membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the committee members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual committee members thereof shall have no powers as such.

**6.4. Resignation and Removal.**

Any committee member designated hereunder by the Board may resign at any time by delivering a written resignation either to the President, the Board, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee designated by it hereunder.

**6.5. Vacancies in Officer Positions.**

If any vacancy shall occur in any committee designated by the Board hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining committee members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

**7. INDEMNIFICATION OF ASSOCIATION REPRESENTATIVES****7.1. Indemnification Generally.**

The Association shall indemnify any Person who was or is a party to, or is threatened to be made a party to, any threatened, pending, or completed action, suit, or proceeding (including a proceeding brought by the Association) whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement in connection with such action, suit, or proceeding, if the indemnified Person (a) acted in good faith, without fraudulent intent or gross negligence (or, if the action is brought by the Association, without negligence or breach of any contractual or fiduciary obligation to the Association), and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse

judgment, order, or settlement, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

### **7.2. *Criteria for Determination.***

To the extent that a Director, officer, employee, or agent of the Association prevails, on the merits or otherwise, in defense of any action, suit, or proceeding referred to in Section 7.1, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 7.1 hereof shall be made by the Association only upon a determination that indemnification of the Director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Section 7.1 hereof. Such determination shall be made by the Board by a majority vote of a quorum consisting of Directors excluding the Person whose indemnification is being considered.

### **7.3. *Advances of Legal Expenses.***

Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board (excluding the Person whose indemnification is being considered) and upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

### **7.4. *Scope of Indemnification.***

The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Declaration, Articles of Incorporation, or agreements, or by vote of disinterested Members of Directors, or pursuant to applicable law. The indemnification authorized by this Article shall apply to all present and future Directors, officers, employees, and agents of the Association and shall continue as to such Persons who cease to be Directors, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and legal representatives of all such Persons.

### **7.5. *Insuring of Association Representatives.***

The Association may purchase and maintain insurance on behalf of any Person who was or is a Director, officer, employee, or agent of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his

status as such, whether or not the Association would have the power to indemnify him against such liability under the Bylaws or the laws of the State of South Carolina, as the same may hereafter be amended or modified.

**7.6. *Payments and Premiums.***

All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute Common Expenses of the Association and shall be paid with funds of the Association.

**8. FISCAL YEAR AND SEAL**

**8.1. *Fiscal Year Defined.***

The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

**8.2. *Seal of Association.***

The Board may by resolution provide a corporate seal that shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Seal" or "Corporate Seal."

**9. RULES AND REGULATIONS**

**9.1. *Rules and Regulations.***

The Board may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Property, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Park West Master Declaration, the Declaration, these Bylaws, or applicable law. Without limitation, such rules and regulations may include establishment of reasonable fees for guests or for special use of facilities in the Common Area, definition of the times and conditions of use of facilities in the Common Area and reasonable charges or fines for failure to observe the terms of this Declaration or the rules and regulations. Upon request of any Owner, such Owner shall be provided a copy of the rules and regulations or the Declaration, provided that the Board may charge a reasonable fee to cover any reproduction, mailing or administrative costs involved.



## 10. NOTICES TO PARTIES

BKA 593PG232

### **10.1. Notice Procedure.**

Notices required hereunder shall be deemed given when in writing and delivered by (a) hand, (b) private carrier that provides evidence of the date of delivery, with delivery charges prepaid, (c) if within the United States, three (3) calendar days after being deposited in the United States Mail, First Class, postage prepaid, or (d) registered or certified mail, return receipt requested, in which event delivery shall be the date that the receipt is signed. Notices to Directors may also be sent by facsimile, in which event delivery shall be the date of written electronic or other written confirmation of receipt. Notices to Owners shall be delivered or sent to such address as has been provided by proper notice to the Association, or if no address has been provided, then at the address of any completed Townhome Unit owned by such Owner, or at the address then shown as that of the Owner on the property tax records.

All notices to the Association shall be delivered or sent in care of the Association at:

c/o Townhomes of Kensington at Park West Association, Inc.  
2000 Center Point Lane, Suite 2100, Columbia, SC 29210

or to such other address as the Association may from time to time specify by proper notice to the Owners.

## 11. AMENDMENT OF BYLAWS

### **11.1. Amendment by Association.**

The Bylaws may be amended in one of two ways:

11.1.1. The Bylaws may be amended by a vote of not less than two thirds of the then-existing Board of Directors. Notice of the proposed amendment shall be given to the Board in writing by a Director proposing the amendment and the notice shall contain a general description of the proposed amendment and the purpose of the proposed amendment.

11.1.2. Alternatively, the Bylaws may be amended after (a) approval of the proposed amendment by a majority of those members of the Board at which a quorum exists, and (b) a vote of the Owners representing a majority of the votes in the Association then existing, as set forth in the Declaration; provided, however, as long as Declarant has the right to select the Board, the written consent of the Declarant shall also be required. Notice of a meeting of the Association to vote on the proposed amendment(s) shall to be given to Owners in the same manner that a notice is given for

election of Directors, as set forth in Section 4.2.2 above. The notice shall contain a general description of the proposed change and purpose of the proposed change. No amendment shall be valid if it is not approved by the Directors or if it is substantially and materially different from that set forth in the notice.

11.1.3. At such time as Declarant or its affiliates no longer own at least ten (10%) percent of the residential square footage approved or approvable for the area of the Master Plan, Townhomes of Kensington, or any Additional Property that may be added to Kensington, or such earlier time as the Declarant records a Supplemental Declaration waiving its authority to determine and designate the Board, no amendment to the Bylaws that imposes a greater economic or legal burden on Declarant than exists under the current provisions of the Declaration or Bylaws shall be valid unless it is approved, in writing, by Declarant.

**11.2. Amendment by Declarant.**

Declarant may amend the Bylaws without the consent of the Association, the Board, any Owner or any mortgagee if, in Declarant's opinion, such amendment is necessary to (i) bring any provision of the Bylaws or the Declaration into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination that is in conflict with the Declaration or the Bylaws; (ii) enable any title insurance company to issue title insurance coverage with respect to any Units subject to the Declaration; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to the Declaration; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on the Units subject to the Declaration; (v) enable any insurer to provide insurance required by the Declaration; or (vi) clarify any provision of the Bylaws or the Declaration or eliminate any conflict between provisions of the Bylaws and/or the Declaration.

**11.3. Amendment by HUD or VA**

As long as both (i) the Declarant and any Affiliate are deemed to be in the Development Period and (ii) any Unit is financed or insured by HUD or VA, HUD or VA shall have the right, after consultation with the Board of Directors, to veto any amendment to the Declaration that is inconsistent with established HUD or VA rules or regulations. If written notice of a proposed amendment is given by the Board of Directors to HUD or VA, with a statement that HUD or VA may have the right to veto such amendment, if written notice of disapproval or request for further consultation is given within fourteen (14) days of receipt of this notice, and if no written waiver, notice of disapproval or request for consultation is received by the Board of Directors within such period, then the Board of Directors may deem any right to veto to be waived.

**11.4. Conflict; Definitions**

**BKA 593PG234**

If any conflict exists between the provisions of the Bylaws and the Declaration, the provisions of the Declaration shall control. To the extent that any terms of these Bylaws is not defined, such terms shall have the same meaning as set forth in the Declaration.

TOWNHOMES OF KENSINGTON AT PARK WEST RULES AND REGULATIONS

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**APPENDIX C-1: EXCERPTS FROM MASTER DECLARATION  
RE: ARCHITECTURAL REVIEW**

**APPENDIX C-2: ADDITIONAL PROVISIONS RE CONSTRUCTION**

## **TOWNHOMES OF KENSINGTON AT PARK WEST RULES AND REGULATIONS**

In addition to any other covenants, conditions, restrictions, easements, rules and regulations, policies, procedures or standards that are applicable to the Property under the Declaration of the Townhomes of Kensington at Park West Association, Inc.(the "Declaration"), the Master Declaration of the Park West Master Association (the "Master Declaration"), applicable deeds, or by law, the following rules and regulations (the "Rules and Regulations") are imposed on the Property pursuant to Sections 5.3 and 5.4 of the Master Declaration.

1. Residential Use of Properties. All Units (which are defined by the Declaration as a Lot or Townhome Unit on the Lot) shall be used solely for residential purposes. No business or business activity shall be carried on upon any Unit at any time; provided, however, that (a) nothing herein shall prevent Declarant or any builder of any homes on the Property from using any Unit owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of the Property and (b) to the extent allowed by applicable zoning laws, a private office may be maintained in a Unit as long as such use is incidental to the primary residential use of the Unit, does not violate any applicable law, does not involve any exterior signage or advertising of the Unit as a place of business, and does not contribute to parking, traffic or security problems, all in the opinion of the Board of Directors of the Townhomes of Kensington at Park West Association, Inc. (the "Association") or the Board of Directors of the Park West Master Association (the "Master Association").

2. Number of Units. Only one (1) Townhome Unit shall be built upon any Lot.

3. Development Guidelines. In addition to the provisions herein, all development with the Property shall comply with the Development Guidelines for Park West, dated May 1997, prepared by Design Works, L.C., as amended from time to time in accordance with the Master Declaration (the "Development Guidelines"). Authority for enforcement of the Development Guidelines is vested in the Development Review Board (the "Development Review Board") established by the Master Association. The Development Guidelines are subject to change, however, so an Owner should confirm that the provisions of Appendix C-1 are still current. (Also see Section 4, below.)

4. Review of Architectural Plans and Development Activities.

A. Section 2.4 of the Master Declaration as amended contains provisions regarding review of plans for residences and other development activity. As a convenience, a copy of that section (as it exists on the date of recordation of the Master Declaration) dealing with such matters is attached hereto as Appendix C-1 and incorporated herein by reference. No development, construction, landscaping or signage installation upon an entry way into a parcel off of Park West Boulevard or other

road shall be undertaken except in accordance with these Development Guidelines and upon the Declarant's prior written approval in accordance with its plan submission and review procedures, which shall be administered by the Declarant's Development Review Board.

B. Neither the Declarant, its Board of Directors, the Master Association or its Board of Directors, the Association or its Board of Directors, any architectural review entity that is established pursuant to the Declaration or Master Declaration, nor any Person who is a member of any of such entities, shall be responsible or liable in any way for any defects in any plans or specifications approved, or for any structural defects in any work done according to such plans and specifications. Further, such Persons shall not be liable for damages to any Person submitting plans or specifications for approval under this Section, or to any Person affected by such plans, specifications, approval or disapproval as a result of mistake of judgment, negligence or non-feasance arising out of, or in connection with, the approval or disapproval or failure to approve or disapprove any such plans or specifications.

5. Residence Size. The enclosed living area of the main structure of a Townhome Unit (exclusive of open porches, porte-cocheres, garages, carports and breezeways, shall not be less than 1500 square feet, as measured from the inside of the perimeter walls of the main structure.

6. Compliance With Ordinances and Restrictions. Each building or structure erected on any Townhome Block shall be located in accordance with applicable zoning, building, setback and similar development standards ordinances of the Town of Mount Pleasant, South Carolina, and in accordance with the restrictions and requirements contained herein. Whichever ordinance, restriction or requirement is more restrictive shall apply.

7. Setbacks. Any building or structure (other than subordinate structures that are normally placed between the front of a residence and a street, such as entry lighting standards, utility junction boxes and transformers, mailboxes, etc.) shall be set back at least fifteen (15) feet from any public or private street right-of-way on which it fronts; provided, however, that (a) exceptions may be granted by the Development Review Board for corner Townhome Blocks and Townhome Blocks on cul-de-sacs and (b) in order to preserve trees, improve storm drainage, achieve aesthetic goals, improve vistas, or similar purposes, the Development Review Board may require a greater setback or propose a lesser setback. If a lesser setback is proposed that would require a variance from the Town of Mount Pleasant, the Development Review Board may require an Owner to seek such a variance, but, in such event, the Association shall pay any fee charged by the Town of Mount Pleasant for processing such variance application. For the purpose of determining compliance with setback requirements, roof eaves and steps that extend from the first living level of the outside wall of a structure to the finished grade of the Lot shall not be considered a part of the structure. The Development Review Board, in its sole discretion, may permit other exceptions, such as on-grade terraces, stoops or similar ancillary exterior extensions of the structure. Any such exception shall be in writing.

8. Buffers, Lagoons, Drainage Areas, etc. Unless an obligation of the Association, all buffer areas shown on any recorded plat as part of a Townhome Block or Lot shall be maintained by the Owner thereof as a planted and landscaped area unless otherwise indicated on the recorded plat. No building or structure that is not indicated on the recorded plat shall be constructed in the buffer area and no parking, storage area or other use that is not indicated on the recorded plat may be maintained therein unless approved in writing by the Development Review Board of the Master Association. No buffer area maintained by the Association or Master Association shall be disturbed in any way by a Unit Owner without the express written permission of (i) the Association and the Master Association, if the buffer area is maintained by the Association, or (ii) the Master Association, if the buffer area is maintained by the Master Association. The Owner of any Unit bordering any lake, lagoon, canal, or drainage easement shall neatly maintain, prune, and, if appropriate, mow, the area between the edge of any lake, lagoon, canal or drainage easement and the Unit unless an obligation of the Association or the Association or the Master Association notifies the Owner, in writing, that its will assume maintenance responsibility of such area. The Association or Master Association may, in its sole discretion, elect to maintain some or all of such area as an Area of Common Responsibility. No waste, garbage or wastewater shall be discharged, dumped or otherwise placed in any lake, lagoon, canal or drainage easement except as may be expressly approved in writing by the Board of Directors of the Master Association and in accordance with any applicable law.

9. Exterior Maintenance. Unless otherwise an obligation of the Association, each Owner of a Townhome Unit shall maintain the exterior thereof in a neat, orderly, safe and aesthetically attractive condition. The areas to be so maintained include, but are not limited to, paint or stain, roofs, gutters, downspouts, chimneys, vents, heating and air conditioning systems, fences, walls, shutters, mailboxes, driveways, walks, lighting, exterior building surfaces, lawns, trees and landscaping. The owner of a Unit shall keep the yard free of all tall grass and weeds, undergrowth, dangerous or dead trees and tree limbs, trash and rubbish, and stored materials.

10. Height. No building or structure shall exceed three (3) stories in height or be in excess of thirty-eight (38') feet in height. "Height" shall be measured from finished exterior grade adjacent to the structure. Unless otherwise expressly permitted in writing by the Development Review Board, elements of the structure that are excluded from height limitations by the Zoning Code of the Town of Mount Pleasant (e.g. chimneys) are also excluded for the purposes of this provision.

11. Subdivision of Lots. No Lot may be subdivided. Two or more Lots (or one Lot and part of another Lot) within a Townhome Block may be combined to form a fewer number of Lots so long as any resulting Lot(s) meet(s) all subdivision and zoning requirements and such combination is approved by the Board of Directors of the Master Association. After combination, any easements along side Lot lines between the combined Lots shall be deemed automatically abandoned unless, at the time of combination of the Lots (a) a utility line or similar use is located within the easement area, or (b) it is likely that a utility



line or similar use shall subsequently be required through such easement area, or (c) the Owner of the combined Lot containing such easement records a document in the RMC Office for Charleston County confirming that the easement is not abandoned. The Owner of any combined Lot shall be responsible for all costs and expenses of removing or relocating any utility located along or adjacent to any side Lot line being abandoned. After combination of the Lots, the structural setback, utility easements and similar building line requirements shall apply as though the combined Lots are a single Lot. The combination of Lots shall not reduce the Assessments allocable to the combined Lots. After combination of the Lots, the Owners combining lots shall apportion their respective shares of the Assessments attributable to the Lot(s) being combined in the same percentage as that portion of the combined Lot(s) bears to the total Lots combined.

12. Walls and Fences. Unless approved by the Development Review Board, no fence or wall shall be erected, placed, or altered on any Unit. This restriction shall not apply to a retaining wall that does not extend more than six (6) inches above the finished grade elevation of the earth so retained, reinforced or stabilized. The exposed part of such retaining walls and any other approved walls shall be made of brick, stucco over masonry, treated railroad ties or landscaping timbers, natural stone or other materials approved in writing by the Development Review Board. Chain link fences are prohibited. In order to permit proper maintenance, unless expressly approved in writing by the Development Review Board, no fence or wall shall be closer than fifteen (15) feet (as measured horizontally) from the normal high water mark of any lagoon, lake, or drainage ditch or easement, or preclude access to any common utility line or facility.

13. Accessory and Temporary Structures. No accessory building or structure, other than a rear-yard garage of similar design features and materials as the main Townhome Unit, shall be permitted unless expressly approved in writing by the Development Review Board. No shed, tent or temporary structure shall be erected or maintained on a Unit except as may reasonably be required, in the opinion of the Development Review Board, for purposes incidental to the construction, maintenance or repair of improvements on the Unit or approved nearby Property, and such structures are promptly removed upon completion of the construction, maintenance or repair. Unless approved in writing by the Board of Directors of the Master Association, no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently. All approved temporary structures shall be neatly maintained during the permitted period of use.

14. Parking and Driveways. The Owner of each Lot, prior to the sale of any Townhome Unit on such Lot, shall provide usable parking spaces on each Lot for the greater of (a) at least two (2) vehicles, or (b) the number of vehicles normally parked on the Lot by occupants of the Townhome Unit on the Lot. All driveways, parking spaces and entrances to garages shall be of concrete or such other substance of a uniform quality that (i) conforms to the Development Guidelines and (ii) is approved in writing by the Development Review Board. The number of vehicles parked on a Lot shall not exceed the number of parking spaces on such Lot that are available for parking. All parking shall be within areas specifically designed for parking. No overnight parking shall be permitted

on streets and no parking shall be permitted on streets at other times unless expressly approved in writing by the Board of Directors of the Master Association. No unlicensed vehicle; house trailer; mobile home; boat; boat trailer; camper; habitable motor vehicle; bus; truck or commercial vehicle over one (1) ton capacity; vehicle bearing a prominent commercial logo or lettering; or any inoperable vehicle shall be stored or parked overnight on a Lot except within an enclosed garage, or when otherwise screened from view from adjacent Units or streets in a manner approved in writing by the Development Review Board of the Master Association.

15. Garages. Garage doors shall be closed except when vehicles are entering or exiting the garage, or when a permitted activity within a garage requires that the garage door be temporarily open for ventilation, light or access. Garages shall be used only for parking permitted vehicles and other activities permitted by the Declaration and law that do not interfere with the primary purpose of parking vehicles.

16. Changing Elevations. No Owner shall excavate or extract earth from a Townhome Block or Unit for any business or commercial purpose. This restriction shall not apply to any excavation that may occur by the Declarant or a builder of a residence on a Lot for the purpose of providing required storm water retention capacity for the Unit or the Property or for removing materials that are unsuitable for construction purposes; provided that the responsible entity shall regrade and/or fill the excavated area as may reasonably be required so that the result is aesthetically acceptable. No elevation changes shall be permitted that materially affect the surface grade of an adjacent Unit or Townhome Block or cause additional storm water to be discharged over such adjacent Unit or Townhome Block, unless approved in writing by the Development Review Board.

17. View Obstructions at Street Intersections. No structure, tree branches, or other vegetation shall be permitted to obstruct the view of an operator of a motor vehicle, pedestrian, or bicyclist at a street intersection. As a general rule, such obstructions shall be prohibited within that area that lies within the approximately triangular space created by the intersection of the outside of the travel surfaces of any two streets, and extending twenty (20) feet along the edge of each street (i.e. a right triangle that is twenty (20) feet in length from the point of intersection). The Development Review Board may require a greater view angle at key intersections. Unless an obligation of the Association, the Owner of a Unit shall be responsible for pruning all vegetation within his Unit that would create an unauthorized obstruction. The Association also shall have an easement to remove any unauthorized obstruction.

18. Delivery Receptacles and Lot Identification Markers. The Development Review Board shall have the right to issue specifications for and/or approve as to location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similar delivered materials; property identification markers; and name signs.

19. Completion of Construction. The Board of Directors of the Association or Master Association shall have the right, but not the obligation, to take appropriate Court action,

whether at law or in equity, to compel the immediate completion of any Townhome Unit or structure not completed within one (1) year from the date of commencement of construction.

20. Animals and Pets. No animals, livestock, reptiles, fowl or poultry shall be raised, bred or kept on any Unit, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and are housed within the Townhome Unit or any accessory structure that has been expressly approved by the Development Review Board in writing. Such household pets must not constitute a nuisance or cause unsanitary conditions. Incessant barking or howling of a dog that is clearly audible on another Unit, shall be a nuisance. Such household pets shall be maintained within the Lot of the Owner and it shall be considered a nuisance if such pet is allowed to go upon another Owner's Unit or to be upon the streets or other Common Areas or Areas of Common Responsibility unless under leash or carried by the Owner. No pet shall be permitted to leave its excrement on any portion of the Common Areas or Areas of Common Responsibility or the Unit of another Owner and any Owner of such pet shall immediately remove the same. The Board of Directors shall have the right to determine, in its sole discretion, whether a particular pet meets the criteria set forth above, and, if not, it may require the owner of the pet to remove such pet from the Property.

21. Offensive Activities. No noxious, offensive or illegal activities shall be carried out on any Unit, nor shall anything be done thereon or therein that is or may become an annoyance or nuisance to the Owners of other Units within the Property or the Park West community. Without limiting the generality of this provision, no exterior speakers, horns, whistles, bells or other sound devices that emit sounds that are audible on other Units shall be located within the Property, except security and fire alarm devices or other devices expressly approved in writing by the Board of Directors of the Master Association.

22. Signs. No signs are permitted except those that are consistent with the Development Guidelines, are professionally designed and constructed; are either street signs or signs identifying the Property as a whole or a particular section within the Property; are required to comply with any law regarding zoning hearings, judicial sales or similar mandatory procedures; or advertise the availability of a Townhome Unit thereon during the development and construction period. All signs during the construction and development period shall be subject to approval by the Development Review Board. No flashing, movable, or neon signage shall be permitted on the Property. No billboards or signs advertising "for sale" or "for rent", or similar wording shall be placed on any Unit or displayed on any Unit.

23. Screening and Clotheslines: Unless otherwise expressly approved in writing by the Development Review Board, trash containers, pool equipment, solar heating panels, heating and air conditioning systems, and similar equipment shall be screened to conceal them from view of the naked eye of a person standing at existing grade on any neighboring Unit, Townhome Block, street, or easement or buffer area containing pedestrian or bicycle paths. All fuel tanks and utility service lines connecting to the

Townhome Unit or other structures on the Unit shall be underground. Exterior clotheslines are prohibited.

24. Antennas and Satellite Dishes. No telecommunications, radio or television transmission or reception towers or satellite dishes or antennas shall be erected on any Unit unless it is (a) not more than two feet in height or diameter, (b) screened from view of the naked eye of a person standing at existing grade on any street fronting on the Lot or Residential Unit, and (c) in a location approved in writing by the Development Review Board.

25. Garbage and Refuse Disposal. Trash, garbage or other waste shall be kept in closed, sanitary containers and, except during pickup periods, shall be kept inside the Townhome Unit or within an enclosed or fenced service or storage area. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All service and storage areas shall be enclosed or fenced in such a manner that the materials within shall be screened from view of the naked eye of a person standing at existing grade on any neighboring Unit, Townhome Block, street, or easement or buffer area containing pedestrian or bicycle paths. Garbage cans, trash containers, boxes, bags, and other trash or debris shall not be placed on the street until after 6:00 P.M. on the day before the date of pickup and all empty containers shall be removed by 6:00 P.M. on the date of pick-up.

26. Water, Sanitary and Storm Water Systems. Water shall be supplied and sanitary sewage and storm water shall be disposed of through such system(s) as may be specified by the Master Association. No Owner shall pump water from any lake or lagoon without the express written approval of the Master Association.

27. Model Homes. Declarant, as well as any builder of homes on the Property, shall have the right to construct and maintain model homes on any of the Townhome Blocks.

28. Easements. In addition to any easements that may be granted by the Declaration or Master Declaration, Units shall be subject to those easements, if any, shown on any recorded plat of the Property or a portion thereof that is approved by the Declarant.

29. Waivers of Rules and Regulations. The Board of Directors or Development Review Board may, for good cause, as determined in its sole discretion, waive violations of these Rules and Regulations that are not violations of the Master Declaration. Such waiver shall be in writing and either maintained for a reasonable period in the offices of the Association or recorded in the Charleston County RMC Office. Nothing herein shall be deemed to allow the Board of Directors to waive violations that must be waived by an appropriate governmental authority.

30. Enforcement of Rules and Regulations. If an Owner fails to comply with these Rules and Regulations, the Association shall take such action as the applicable Board of Directors determines is appropriate to enforce the Rules and Regulations or to remedy the problem caused by the Owner's failure to comply, in accordance with the Declaration.

The Board of Directors shall give the non-complying Owner written notice of the nature of the violation and, if desired, the action that is required in order to cure the violation. Except in cases in which the Board of Directors determines that the violation constitutes a safety hazard, violation of law or an emergency situation, the Owner shall have seven (7) calendar days from the date of receipt of notice, or such additional time as may be authorized by the Board of Directors in writing, to cure the violation or to provide to the Board of Directors reasonable evidence that no violation exists. The Board of Directors of the Master Association shall also have the right to enforce these Rules and Regulations pursuant to the procedure set forth above.

31. Other Rules and Regulations. The Board of Directors may issue other Rules and Regulations from time to time.

**APPENDIX C-1  
EXCERPTS FROM MASTER DECLARATION RE ARCHITECTURAL REVIEW**

**2.4. DEVELOPMENT AND ARCHITECTURAL REVIEW**

**2.4.1. Development Activity Requiring Review**

Unless otherwise expressly permitted in writing by the Declarant, the Board of Directors or the Development Review Board, no clearing, grading or excavation; removal or severe pruning of a tree having a trunk diameter greater than eight (8) inches at five (5) feet above surrounding grade; or construction of any residence, building, fence or wall, pool, fountain, terrace, patio, deck, road, walkway, antennae, lighting, or other structure on a Lot shall commence, and no modification thereto shall occur (such commencement or modification being cumulatively referred to as "Development Activity"), until such Development Activity has been approved by the Development Review Board. In its sole discretion, however, the Board of Directors or Development Review Board may delegate in writing some or all of its authority for review of such Development Activity to any Person or Persons, including the Board of Directors of any Subordinate Association or any architectural review entity that may be established by such Subordinate Association.

**2.4.2. Compliance with Development Guidelines**

The Developer of a Parcel and each Unit Owner shall comply with the Development Guidelines for Park West, dated May 1997, prepared by Design Works L.C., as they may be amended by Declarant from time to time (the "Development Guidelines"), which Development Guidelines are incorporated herein by reference.

**2.4.3. Composition of Development Review Board**

As long as the Declarant has a Controlling Interest in the Property, the number of Persons composing the Development Review Board shall be determined by the Declarant or its designee. Thereafter, the number of Persons composing the Development Review Board shall be determined by the Board of Directors of the Association. A member of the Development Review Board need not be an Owner. The Development Review Board may also select such non-voting advisors or consultants as it may determine are useful in evaluating a submission for Development Activity.

**2.4.4. Review of Development Plans for Parcels**

Unless waived in writing by Declarant, the following shall require written approval by the Development Review Board in accordance with review procedures issued by the Development Review Board from time to time: (i) Development Plan (as defined in the Development Guidelines); (ii) a site plan showing the proposed location of all structures in the Parcel (excluding single family homes), roads, curbs, utilities, paths, signage, exterior lighting, landscaping, etc.; and (iii) all construction, landscaping, lighting, signage or

similar development in the Park West Boulevard Buffer, the Neighborhood Entry Buffers or the Adjacent Parcel Buffers, as defined in the Development Guidelines. The Developer of a Parcel may also impose additional restrictions on such Parcel if such restrictions do not conflict with the Development Guidelines, in the opinion of the Development Review Board.

#### 2.4.5. Review of Residences and Other Development Activity

The Development Review Board may, from time to time, establish procedures and policies for review of proposed residences and other Development Activity. In addition, the Board of Directors may, from time to time, establish or approve, in writing, architectural and/or landscape design standards for various Parcels within the Property, which standards shall be set forth in one or more Subordinate Declarations. In recognition of the fact that various portions of the Property may be intended for residences and structures of different types, cost, quality, complexity, motifs, architectural concepts and density, there shall be no requirement that the procedures and policies for review of all structures and Development Activity within the Property be identical, or that the architectural and/or landscape design standards for various Parcels be identical. The Development Review Board may, in its sole discretion, modify or waive established procedures and policies, or architectural and/or landscape design standards, in order to deal with hardships determined to exist, or new or unique issues, or for other purposes determined by the Development Review Board to be in the best interests of the Property.

#### 2.4.6. Enforcement

The Declarant, the Association or the Development Review Board shall have authority to monitor Development Activity and to halt or require modification of Development Activity not executed in accordance with approved plans, established procedures, policies or standards, this Declaration, or the Rules and Regulations. Enforcement shall occur in accordance with Section 8.3 of this Declaration.

#### 2.4.7. Obtaining Copy of Development Guidelines, Policies and Procedures

A copy of the current Development Guidelines and/or any current review procedures or policies which apply to a particular Parcel or portion of the Property shall be provided to any Owner by the Association upon written request to the Development Review Board, in care of the Association, as set forth in Section 8.11 of the Declaration. The Association may charge a reasonable fee to cover the delivery, administrative and reproduction costs for so providing.

#### 2.4.8. Fees for Review of Development Activity

The Board of Directors may establish a schedule of fees for review or inspection of Development Activity in order to cover the reasonable costs to the Development Review Board or the Association regarding such matters, such as administrative and operating expenses, storage of materials, consultation, site inspections; etc.

**2.4.9. Deposits for Proper Performance of Development Activity**

The Board of Directors may establish a schedule of deposits to be paid by an Owner prior to commencement of Development Activity. The purpose of such deposits may include, without limitation, to provide adequate funds to insure compliance with approved plans and conditions for Development Activity, including required landscaping; to enforce applicable rules and regulations; to place and collect trash containers at the site or to remove trash from the site; to enforce parking rules and regulations; etc. Upon completion of the Development Activity, any unused deposits shall be refunded to the depositing Owner.

**2.4.10. No Liability for Development Activity Review**

Neither the Development Review Board, the Declarant, the Board of Directors, the Association, nor any Person who is a member of such entity, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Development Review Board or any entity to which the Development Review Board has delegated responsibility, nor for any structural defects in any work done according to such plans and specifications. Further, such Persons shall not be liable for damages to any Person submitting plans or specifications for approval under this Section, or to any Person affected by such plans, specifications, approval or disapproval as a result of mistake of judgment, negligence or non-feasance arising out of, or in connection with, the approval or disapproval or failure to approve or disapprove any such plans or specifications.



APPENDIX C-2  
 ADDITIONAL PROVISIONS RE CONSTRUCTION

*CONSTRUCTION RULES FOR  
 ALL OWNERS AND CONTRACTORS AT PARK WEST*

1. Applicability. These Rules shall apply to all Lot Owners and builders, and any reference herein to an Owner shall also apply to the Owner's builder and subcontractors. While at Park West, all Owners shall abide by these Rules and such other rules as the Master Association Board and/or the Development Review Board may establish from time to time.

2. Commencement of Construction. As stated in Paragraph 4 of the Master Declaration, no construction (whether new construction or renovation) may be commenced in Park West without architectural approval of the Architectural Review Board or Development Review Board, as appropriate.

3. Construction Hours and Noise. All construction activities must be conducted and all deliveries must be made from 6:00 a.m. until 8:00 p.m. Monday through Saturday. Any construction activities conducted or access to Park West after these hours must be scheduled with the Development Review Board twenty-four (24) hours in advance. No loud radios or distracting noises will be permitted during construction.

4. Rubbish and Debris. In order to maintain a neat and orderly appearance at all times throughout Park West, the following rubbish and debris rules must be strictly followed:

4.1. Domestic Refuse. At least one (1) trash container must be located at all times inside each residence under construction. All domestic refuse such as food scraps and packaging, cups, plates, napkins and similar items which at any time exist in the residence or on the Lot must be placed in the trash container. The trash container shall be emptied regularly and its contents properly disposed of off the Lot and outside of Park West.

4.2. Interior Construction Debris. All parties are strongly encouraged to frequently clean up and remove rubbish and construction debris located within the walls of a residence.

4.3. Exterior Construction Debris. With regard to all construction debris located on a Lot outside the walls of a residence, the following rules shall apply:

(i) By the end of each day on which work occurs on the Lot, all lightweight construction debris such as roofing paper, insulation bags, foam sheathing, polyethylene, etc., must be placed in an approved waste container and located on the Lot;

(ii) By the end of the day on each Friday, all non-blowable construction debris such as wood scraps, shingles' brickbands, drywall, bricks and masonry blocks must be gathered and placed in the waste container; and

(iii) The waste container must be emptied and the debris hauled away on an as-needed basis and before it is filled to overflowing.

Within the last three (3) days of every month, all debris must be taken off the Lot and out of Park West, leaving the Lot free of all debris.

4.4. No Burning or Burial. Burning or burial of construction debris or vegetation is prohibited.

5. Excess Natural Materials. Excess plant matter, rock, topsoil and similar materials must be offered first to Park West Development, Inc. prior to their removal from Park West, and no such materials may be removed from Park West without the prior approval of Park West Development, Inc.

6. Street Cleaning. Approximately once each week near the end of the week, the *Park West Homeowners Association* ("Association") may engage a street cleaning service to clean the streets in Park West of normal construction dirt, mud and gravel. The Association shall pay for twenty-five percent (25%) of the cost of such service. The Owners constructing homes at the time such services are rendered shall pay for the remaining seventy-five percent (75%) of the cost, in accordance with the following formula:

A particular Owner's pro-rata share of street cleaning costs shall be determined by multiplying the total cost of the service times (a) .75 and (b) a fraction, the denominator of which is the total number of houses in Park West under construction, and the numerator of which is the number of houses in Park West that such Owner has under construction. The intent of this formula is to ensure that each house under construction bears its fair share of the street cleaning costs while under construction, but not thereafter. Invoices from the Association for reimbursement of the street cleaning costs must be paid within thirty (30) days.

Park West Development, Inc. shall also have the right, without notice, to clean up any significant amount of dirt, gravel, cement, etc., left on any street if the same is not immediately removed by the Owner responsible therefor, charge the cost of such clean up to the responsible Owner and receive reimbursement for the expense of such clean up from the Owner or the Owner's Construction Escrow Deposit.

7. Silt Fences. Silt fences and/or other devices for sedimentation control shall be installed where necessary or as directed by the Development Review Board.

8. Materials Storage. No construction materials, equipment or debris of any kind may be

stored on any street, curb, sidewalk or area between streets and sidewalks, on any adjacent Lots or otherwise than in the locations approved of by the Development Review Board.

9. Trailers. No construction office trailers may be placed, erected or allowed to remain on any Lot or in any other area in Park West, except as approved in writing by the Development Review Board.

10. Construction Access. During the time a residence or other Improvements are being built, all construction access shall be confined to the approved driveway for the Lot unless the Development Review Board approves an alternative access way.

11. Gravel Drives. Prior to commencement of construction on any Lot, the Owner contractor shall provide at the approved driveway location a gravel drive with a minimum of five (5) inches of #5 crushed stone base from the paved street to the house under construction.

12. Parking. All vehicles must be parked so as not to impede traffic or damage vegetation. No vehicles (trucks, vans, cars, trailers, construction equipment, etc.) may be left parked on any streets within Park West overnight. Construction vehicles may be left on a Lot overnight only if additional use of the vehicle will be made within the following three (3) days.

13. Miscellaneous Practices. The following practices are prohibited at Park West:

1. Changing oil of any vehicle or equipment;
2. Allowing concrete suppliers and contractors to clean their equipment other than at locations, if any, designated for that purpose by the DRB;
3. Carrying and/or discharging any type of firearms, except by law enforcement officials and security personnel authorized in writing by Park West Development, Inc.;
4. Careless and thoughtless disposition of cigarettes and other flammable material.

14. Pets. Builder and contractor personnel may not bring pets onto Park West property.

15. Common Areas. Except with the prior written permission of the Development Review Board, Builder and contractor personnel are not allowed in the common or amenity areas and no construction access will be allowed across the Amenity or other Common Areas.

16. Accidents. Park West Development, Inc. shall be notified immediately of any accidents, injuries or other emergency occurrences. Subsequent to a 911 or other emergency calls, Park West Development, Inc. should be notified at 843-884-8595.

17. Portable Chemical Toilets. An enclosed and regularly serviced portable chemical toilet must be provided at each residence under construction, in as inconspicuous a location as possible.

18. Speed Limits. Unless otherwise established by the Town of Mount Pleasant, the established speed limit within Park West community (except for traffic on Park West Boulevard) is twenty-five miles per hour (25 mph) for all vehicles, and this limit must be obeyed. Although the Town of Mount Pleasant has traffic jurisdiction over the streets within Park West, individuals violating speed limits may be cited by the Park West Security, if any, as well.

19. Property Damage. Any damage as a result of construction to streets and curbs, drainage inlets, street lights, street markers, mailboxes, walls, fences, etc. will be repaired by the Park West Master Association, and the cost of such repairs will be billed to the Owner, or other responsible party. If not paid promptly, the repair cost will be deducted from the Landscape/Construction Escrow Deposit. If the Landscape/Construction Escrow Deposit is not sufficient to cover the entire repair cost, the additional amount will be charged to and promptly paid by the Owner. If any telephone, cable T.V., electrical, water or other utility lines are cut, the party causing such damage shall (1) report the matter within thirty (30) minutes to the Park West Master Association Manager, and at the respective utility company, and (2) bear any cost incurred in connection with repairing such damage.

20. Failure to Abide. Failure to abide by any of the above rules may result in fines and the loss of a contractor's privilege to enter Park West on a temporary or permanent basis.

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Filed By:

Harvey, Casterline & Vallini, L.L.P. Attys And Counselors at Law 401-C Seacoast Parkway Mt. Pleasant SC 29464-8252
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DESCRIPTION AMOUNT

MISC/AMEND	\$ 82.00
Postage	

<b>TOTAL</b>	<b>\$ 82.00</b>
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