

Instrument#: 2019000028072, DEED BK: 4192  
PG: 151 DOCTYPE: 069 03/18/2019 at 04:21:49  
PM, 1 OF 49 MARION D. FOXWORTH III,  
HORRY COUNTY, SC REGISTRAR OF DEEDS

**Prepared By and Return To:**

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**THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO THE SOUTH  
CAROLINA UNIFORM ARBITRATION ACT  
(S.C. CODE ANN. § 15-48-10 ET SEQ., AS AMENDED)**

STATE OF SOUTH CAROLINA	)	SUPPLEMENTAL DECLARATION OF
	)	COVENANTS, CONDITIONS AND
COUNTY OF HORRY	)	RESTRICTIONS CREATING BLACKWATER
	)	TOWNHOMES

This Supplemental Declaration of Covenants, Conditions and Restrictions Creating Blackwater Townhomes (the "Declaration") is made March 14, 2019, by D.R. Horton, Inc., a Delaware corporation, hereinafter referred to as the "Declarant." Declarant states and declares as follows:

**DECLARANT EXPRESSLEY RESERVES THE RIGHT TO AMEND OR RESTATE THIS SUBDIVISION DECLARATION WITHOUT THE CONSENT OF AN OWNER, THEIR MORTGAGEE(S) OR THE TOWNHOME ASSOCIATION FOR SO LONG AS THE DECLARANT OWNS ANY PORTION OF THE PROPERTY. ANY AMENDED OR RESTATED DECLARATION MAY CONTAIN ADDITIONAL RESTRICTIONS OR OBLIGATIONS AFFECTING THE USE OF THE TOWNHOME COMMON AREA, A TOWNHOME LOT, OR ANY OTHER SUCH PORTION OF THE PROPERTY. ANY AMENDED OR RESTATED DECLARATION MAY ALSO AFFECT AN OWNER'S OBLIGATIONS AS A MEMBER OF THE TOWNHOME ASSOCIATION. EVERY PURCHASER OR GRANTEE OF ANY TOWNHOME LOT OR TOWNHOME COMMON AREA NOW AND HEREINAFTER DESIGNATED, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE THEREOF, ACKNOWLEDGES NOTICE OF THE DECLARANT'S RIGHT TO AMEND THIS SUPPLEMENTAL DECLARATION AND THAT THEIR RIGHTS ARE SUBJECT TO CHANGE. ANY SUCH AMENDMENT SHALL BE APPLICABLE TO AND BINDING UPON THE OWNERS AND THE TOWNHOME LOTS. AT THE OPTION AND SOLE DISCRETION OF THE DECLARANT, ANY AMENDMENTS TO THIS SUPPLEMENTAL DECLARATION MADE BY THE DECLARANT MAY APPLY: (1) UPON THE DATE OF EXECUTION OR RECORDING OF THE AMENDED OR RESTATED DECLARATION; (2) RETROACTIVELY TO THE DATE OF THIS SUBDIVISION DECLARATION OR TO SOME OTHER SPECIFIED DATE IN THE AMENDMENT, OR (3) PROSPECTIVELY TO SOME SPECIFIED DATE IN THE AMENDMENT. CERTAIN RIGHTS OF THE DECLARANT SET OUT IN THIS SUPPLEMENTAL DECLARATION SHALL CONTINUE AFTER THE DECLARANT NO**

**LONGER OWNS ANY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE RIGHT OF RE-ESTABLISHING ITS CLASS B MEMBERSHIP IF AND WHEN IT RE-ACQUIRES ANY OF THE PROPERTY OR ANNEXES ADDITIONAL LAND TO THE PROPERTY.**

A. Declarant is the owner of those Townhome Lots and Townhome Common Areas exclusively serving the Townhome Lots located in Horry County, South Carolina, described in Exhibit A attached hereto and incorporated herein (the "Townhome Property"). The Townhome Property is a portion of that planned community known as "The Dye Club" (the "Master Community").

B. Silver Carolina Development Company, L.L.C. previously caused to be recorded that Declaration of Covenants, Conditions and restrictions for Barefoot Resort Residential Properties recorded in Deed Book 2251 Page 384, Horry County Register of Deeds (the "Master Declaration"). Coastal Resort Holdings, LLC ("Coastal") was subsequently assigned rights as Declarant under the Master Declaration pursuant to (i) that Quitclaim Bill of Sale, Assignment and Assumption recorded in Deed Book 2822 Page 596, Horry County Register of Deeds and (ii) that Assignment of Declarant Rights recorded in Deed Book 2822 Page 635, Horry County Register of Deeds. The terms and provisions of the Master Declaration apply to the Townhome Property.

C. Coastal hereby executes this Supplemental Declaration as Declarant under the Master Declaration in order to reflect its consent to this Supplemental Declaration.

D. Declarant intends to subdivide the Townhome Property into residential Townhome Lots, Townhome Common Areas exclusively serving the Townhome Lots, and rights-of-way, and to establish the Townhome Property as a separately developed residential Neighborhood and planned community within the Master Community to be known as Blackwater Townhomes (the "Townhome Community"), designate the Townhome Common Areas within the Townhome Property as Limited Common Areas for the exclusive use of the Townhome Lots, and impose on the Townhome Property additional covenants, conditions and restrictions to protect and to promote the beneficial ownership, use and enjoyment of all Townhome Lots located within the Townhome Community, the terms of which shall supplement the covenants, conditions and restrictions of the Master Declaration.

THEREFORE, Declarant hereby executes this Supplemental Declaration to create Blackwater Townhomes, and declares that henceforth all of the Townhome Property shall be designated as a separately developed residential Neighborhood within the Master Community, all of the Townhome Common Areas located within the Townhome Property shall be designated as Limited Common Areas for the exclusive use of the Townhome Lots, and all of the Townhome Property shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall run with the Townhome Property and which shall be binding upon all owners of any portion of the Townhome Property and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

**Article I. INTENTIONALLY DELETED.**

**Article II. Definitions.**

The definitions set forth below shall have the specific meanings stated:

The definitions set forth in N.C.G.S. § 47F-1-103 shall apply to this Supplemental Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

"Annexation Declaration" shall mean an instrument recorded at the Horry County Register of Deeds that subjects additional land to this Declaration.

"Articles of Incorporation" shall mean the Articles of Incorporations for Blackwater Townhomes Community Association, Inc., a South Carolina nonprofit corporation.

"Base Assessment" shall mean the assessment levied on all Townhome Lots subject to assessment under Article IX below to fund common expenses, as determined in accordance with Article IX below.

"Board of Directors" or "Board" shall mean the executive board of the Townhome Association, as created by the Bylaws.

"Bylaws" shall mean the bylaws of the Townhome Association as they now or hereafter exist and as they may be amended from time to time.

"Declarant" shall mean D.R. Horton, Inc., a Delaware corporation, or any successor or assign designated as Declarant in a Recorded Document executed by the immediately preceding Declarant.

"Declarant Control Period" shall mean the period of time during which Declarant holds a fee interest or contractual right in any portion, however small, of the land described in **Exhibit A** attached hereto and incorporated herein.

"Governing Documents" shall mean, collectively, the Master Declaration, this Supplemental Declaration, the Articles of Incorporation, the Bylaws, and the Rules and Regulations, as the same may be amended from time to time.

"Master Association" shall mean (i) Barefoot Resort Residential Owners Association, Inc., its successors and assigns, and (ii) The Dye Estates Homeowners Association, Inc., its successors and assigns.

"Master Declaration" shall mean (i) that Declaration of Covenants, Conditions and restrictions for Barefoot Resort Residential Properties recorded in Deed book 2251 Page 384, Horry County Register of Deeds and (ii) that Declaration of Covenants, Conditions and Restrictions for the Dye Estates recorded in Deed Book 2328 Page 745, Horry County Register of Deeds.

"Master Plan" shall mean the master land-use plan for the development of the Townhome Community approved by Horry County.

"Member" shall mean and refer to every person or entity entitled to membership in the Townhome Association as provided in Article III below.

"Mortgage" shall mean a mortgage recorded at the Horry County Register of Deeds that is a lien against any Townhome Lot. "Mortgagee" shall refer to a beneficiary or holder of a Mortgage. A "First Mortgage" shall be a Mortgage having priority over all other Mortgages encumbering a Townhome Lot. "First Mortgagee" shall refer to a beneficiary or holder of a First Mortgage.

"Owner" shall mean and refer to an owner of record of a fee simple interest in any Townhome Lot, including contract sellers, but excluding those having an interest only as security for the performance of an obligation. There may be more than one Owner of any single Townhome Lot.

"Recorded Document" shall mean any document, including any map or plat of survey, recorded at the Horry County Register of Deeds.

"Rules & Regulations" shall mean the initial rules and regulations for use and occupancy of the Townhome Lots and the Townhome Common Area set forth in **Exhibit C**, as they may be supplemented, modified, restated or superseded pursuant to Article IV below.

"Special Assessments" shall mean assessments levied in accordance with Section 9.2 below.

"Specific Assessments" shall mean assessments levied in accordance with Section 9.3 below.

"Supplemental Declaration" shall mean this Supplemental Declaration of Covenants, Conditions and Restrictions for Blackwater Townhomes, and any amendments hereto or restatements hereof.

"Townhome Association" shall mean Blackwater Townhomes at Dye Estates Community Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

"Townhome Building" shall mean any building comprising residences located upon Townhome Lots.

"Townhome Common Area" shall mean all property, and any improvements thereon, wherever located, owned or leased by the Townhome Association or subjected to an easement or license in favor of the Townhome Association for the common use and enjoyment of Members. Townhome Common Area shall include all water and sewer lines serving more than one Townhome Lot and located outside any public rights-of-way or utility easements. Townhome Common Area shall include any drainage easements, stormwater pipes, detention and retention facilities serving more than one Townhome Lot and not accepted by any governmental authority for maintenance.

"Townhome Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Townhome Community or the minimum standards established pursuant to the architectural guidelines under the Master Declaration, Rules and Regulations, and Board resolutions, whichever is the higher standard. Declarant shall initially establish such standard, which may involve both objective and subjective elements. The Townhome Community-Wide Standard shall evolve as the Townhome Community evolves.

"Townhome Lot" shall mean any separate parcel of land within the Townhome Community designated for construction and maintenance of a townhome residence and designated for separate ownership or occupancy and residential use.

### **Article III. Blackwater Townhomes Community Association, Inc.**

Every person or entity who is an owner of a fee or undivided fee simple interest in any of the Townhome Lots shall be a Member of the Townhome Association. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The Townhome Association shall be organized and governed as follows:

3.1. Purposes. The purposes of the Townhome Association shall be:

- a. To install, operate, maintain and preserve all Townhome Common Areas, and all roads, streets, sidewalks, decorative and protective structures (including but not limited to entry monuments and buffer walls), ponds, lakes, utilities, landscaped areas and other improvements located thereon, if any;
- b. To enforce the provisions of the Governing Documents;
- c. To perform all duties and functions allotted to owner's associations;
- d. To promote and to protect the enjoyment and beneficial use and ownership of the Townhome Lots; and
- e. To promulgate and enforce the Rules and Regulations and administrative rules and regulations for use of the Townhome Common Area.

3.2. Powers and Responsibilities. The Townhome Association shall have all rights, powers and responsibilities and shall perform all duties and functions that may be assigned to it by Declarant pursuant to this Supplemental Declaration.

3.3. Voting Rights and Meetings. On matters of Townhome Association business submitted to vote of the membership, there shall be two classes of membership:

Class A. Every person who is an Owner, with the exception of the Declarant, shall be a Class A Member. Class A Members shall be entitled to one (1) vote per Townhome Lot. No more than one vote per Townhome Lot may be cast by Class A Members, regardless of the number of Owners of a given Townhome Lot.

Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Townhome Association. The Class B Member shall be entitled to one (1) vote for each Townhome Lot it owns, plus one (1) vote for each Townhome Lot owned by a Person other than the Declarant. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (i) the date that all the Townhome Lots in the Townhome Community have been conveyed by the Declarant to other Owners; (ii) the surrender by the Declarant of the right to appoint or remove any officer of the Townhome Association or member of the Board by a Recorded Document executed by the Declarant; or (iii) the expiration of Declarant's rights to appoint or remove any officer of the Townhome Association or member of the Board pursuant to Article XI below.

Unless otherwise provided herein, all voting matters shall be decided by a simple majority vote. Requirements for a quorum shall be as provided by the Bylaws. The Members shall meet as provided by the Bylaws.

3.4 Bylaws. The initial Board shall enact and adopt all and any Bylaws that they deem necessary for the operation of the Townhome Association, which Bylaws shall be binding upon all Members, their Mortgagees, lessees, agents and invitees.

#### **Article IV. Use and Occupancy of Townhome Lots and Townhome Common Areas.**

##### **4.1. Fundamental Restriction on Use.**

The Townhome Lots and Townhome Common Area shall be used for residential and related purposes only, subject to and consistent with the Governing Documents, including the Rules and Regulations; provided that Declarant, the Townhome Association and/or builders approved by Declarant may maintain a business or management office within the Townhome Community, and provided that Declarant and/or any brokers or builders approved by Declarant may maintain information centers, model homes and sales offices within the Townhome Community. Notwithstanding the above, home business use ancillary to the primary residential use of a Townhome Lot is permitted, subject to the Rules and Regulations and all applicable laws and ordinances of governmental authorities.

##### **4.2. Fundamental Restriction on Occupancy.**

All Occupants of a single Townhome Lot shall be members of a single family. For purposes of this Supplemental Declaration, a single family unit is defined as a group of individuals related by blood, marriage, adoption, or guardianship, or not more than three (3) persons not so related, living together as a single housekeeping unit. The number of Occupants on each Townhome Lot shall also be reasonably limited by the Townhome Lot's size and facilities and by a policy against disproportionate use of the Townhome Common Areas.

##### **4.3. Additional Restrictions on Use and Occupancy of Townhome Lots.**

Use and occupancy of all Townhome Lots shall be restricted as provided in the Master Declaration and as follows:

4.3.1 Completion of Construction. Once construction of any structure located within the Townhome Community is begun, it must be prosecuted diligently and must be completed within twelve months of its commencement, unless otherwise approved in writing by Declarant.

4.3.2 Subdivision of Townhome Lots. No dwelling shall be erected on less than one Townhome Lot and no Townhome Lot shall be subdivided; however, owners of adjoining Townhome Lots may adjust a common boundary line, provided that the adjustment conforms in all respects with all applicable governmental regulations and ordinances, and with this Supplemental Declaration.

4.3.3 Signs. No signs, billboard, banner or item of similar nature shall be displayed to public view on any Townhome Lot, right of way or Townhome Common Area without the prior written approval of the ARC (as defined in Section 5.2.2 below), including, but not limited to a "for sale", "for rent" or "garage sale" sign. This provision shall not apply to marketing, construction, advertising or informational signs placed on any Townhome Lot, right of way or Townhome Common Area by Declarant or a builder approved by Declarant. The Townhome Association may have the right to remove, have removed, or require the removal of any such sign which in its opinion would not otherwise be allowed under this Supplemental Declaration or as amended or supplemented. A valid easement shall exist on any Townhome Lot for such removal by the Townhome Association or its agents. Notwithstanding anything to the contrary herein, the rights of Owners and Occupants to display on their Townhome Lots flags and political signs

normally displayed in or outside of residences in single-family residential neighborhoods shall not be abridged, except that the Townhome Association may adopt reasonable time, number, size, place and manner restrictions regulating displays which are visible from outside the Townhome Lot.

4.3.4 Refuse Storage. No Townhome Lot shall be used or maintained as a dumping ground for rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Townhome Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any Townhome Lot that will emit foul or obnoxious odors, or that will cause any noise that might disturb the peace, quiet, comfort or serenity of the occupants of surrounding Townhome Lots. Trash, garbage or other waste shall not be burned or disposed of on any Townhome Lot and shall be kept in sanitary containers approved by the ARC. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the ARC and, in any event, shall be kept in the garage located on the Townhome Lot except for on the day that trash is collected within the Community.

4.3.5 Storage of Building Materials. No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes shall be stored upon any Townhome Lot longer than a reasonable time for the completion of the construction in which they are to be used.

4.3.6 Temporary Structures. No temporary structures such as sheds shall be erected or placed on a Townhome Lot without the written approval of the Declarant or the Townhome Association. Such structures, if permitted, may be used only during periods of construction, and never as a residence.

4.3.7 Parking and Vehicle Storage. Only licensed and operative vehicles, classified as passenger cars, station wagons, passenger pick-up trucks or passenger vans may be regularly parked in driveways; provided, however, that no recreational vehicles of any kind may be permitted to park anywhere in the Townhome Community. For the purposes of this Supplemental Declaration, a recreational vehicle or "RV" shall mean any van, utility vehicle or similar type of vehicle that is used for recreational purposes, such as camping, and may be equipped with living facilities. No vehicle will be permitted to park regularly on any roadway within the Townhome Community. No vehicle located on a Townhome Lot may be used as a dwelling, even temporarily.

4.3.8 Offensive Activities Prohibited. No noxious or offensive activity shall be conducted upon any Townhome Lot or Townhome Common Area, nor shall anything be conducted thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood or to the Occupants of any Townhome Lot.

4.3.9 Underground Utilities. All utility lines serving structures located on Townhome Lots shall be placed underground.

4.3.10 Mobile Homes and Manufactured Housing. No mobile home, trailer or manufactured housing shall be located on any Townhome Lot.

4.3.11 Screening. Satellite dishes, antennae, clotheslines, pet enclosures and the like shall not be located on a Townhome Lot so as to be visible from any roadway or any other Townhome Lot. Boats, boat trailers and campers shall not be located on a Townhome Lot, except stored inside of a closed garage, unless fencing has been installed on the Townhome Lot to screen the boats, boat trailers and/or campers so that they are not visible from any roadway or any other Townhome Lot.

4.3.12 Swimming Pools, Playground Equipment and Trampolines. No above ground swimming pools, playground equipment or trampolines shall be located on any Townhome Lot.

4.3.13 Window Treatments. Owners shall not cause or permit any curtains, shades or other window coverings to be hung inside or outside any windows or transparent doors which show any color other than white or off-white on the outside.

4.3.14 Privacy Fences. Owners shall not cause or permit any removal of the privacy fences installed by Declarant between Townhome Lots.

#### 4.4. Rules and Regulations

In addition to the restrictions stated above, which may be modified or rescinded only by an amendment to this Supplemental Declaration, use and occupancy of the Townhome Lots and Townhome Common Area shall be subject to the Rules and Regulations, which are intended to govern day-to-day use and occupancy of the Townhome Lots and Townhome Common Areas. The initial Rules and Regulations are set forth in **Exhibit C** attached hereto and incorporated herein. In order to adapt and respond to changing or unforeseen circumstances affecting the Townhome Community, the Declarant, the Townhome Association and the Owners must have the ability to change the Rules and Regulations in an expedited and inexpensive manner. Accordingly, the Rules and Regulations may be amended, supplemented and/or rescinded and restated as set forth in this Section 4.4.

4.4.1. Declarant's Authority. During the Declarant Control Period, the Declarant shall have the unilateral right to amend, supplement and/or rescind and restate the Rules and Regulations, without prior notice to the Townhome Association or to other Owners; provided that no such action by Declarant may have a materially adverse effect on title to or marketability of any Townhome Lot.

4.4.2. Board Authority. The Board may amend, supplement and/or rescind and restate the Rules and Regulations. The Board shall send notice by mail to all Members concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. The Board's decision on such action shall be final, subject only to subsection 4.4.1 above.

4.4.3. Members' Authority. Members representing more than Fifty (50%) percent of the total votes in the Townhome Association, at Townhome Association meeting duly called for such purpose, may amend, supplement and/or rescind and restate the Rules and Regulations.

4.4.4. Conflicts. Nothing in this Article shall authorize the Board to modify, repeal or expand the Architectural Guidelines or any provision of this Supplemental Declaration. In the event of a conflict between this Supplemental Declaration and the Rules and Regulations, this Supplemental Declaration shall control. In the event of a conflict between the Master Declaration and the Rules and Regulations, the Master Declaration shall control.

4.5. Limitations. The right and ability of the Declarant and the Board to amend, supplement or restate the Rules and Regulations shall be limited as follows:

4.5.1. Displays. The rights of Owners to display religious and holiday signs, symbols and decorations inside structures on their Townhome Lots of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, but no such display may violate the Townhome Community-Wide Standard or violate any other provision of this Supplemental Declaration.

4.5.2. Activities Within Dwellings. No rule established pursuant to this Article shall interfere with the activities carried on within the confines of dwellings, except that the Townhome Association may restrict or prohibit any activities that create costs for the Townhome Association or other Owners, that



create a danger to the health or safety of others, that generate excessive noise, traffic or use of parking facilities, that create unsightly conditions visible outside the dwelling or that otherwise violate the provisions of this Supplemental Declaration or any applicable governmental law, ordinance or regulation.

4.5.3 Alienation. No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Townhome Lot or require consent of the Townhome Association or Board for leasing or transfer of any Townhome Lot; however, the Townhome Association may require a minimum lease term of six (6) months and otherwise regulate the leasing of Townhome Lots.

4.5.4 Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Townhome Lot prior to the adoption of such rule and which was in compliance with all rules previously in force. This limitation shall apply only for the duration of such Owner's ownership of the Townhome Lot personally, and this right shall not run with title to any Townhome Lot.

The limitations stated in this subsection shall not apply to amendments to this Supplemental Declaration.

#### 4.6 Townhome Common Area Administrative Rules.

The Board may promulgate and enforce administrative rules and regulations governing use of the Townhome Common Areas without notice to the Members or any hearing. Examples of such administrative rules and regulations shall include, but not be limited to, setting hours of operation of a recreational facility or allocating or reserving use of a facility by particular individuals at particular times.

#### 4.7 Notice to Purchasers and Mortgagees.

All prospective purchasers and mortgagees are given notice that use of the Townhome Lots and the Townhome Common Area is restricted and governed by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Purchaser, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Townhome Lot shall be affected by the Rules and Regulations which may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded Document. Take notice that the Declarant or the Townhome Association may have changed the initial Rules and Regulations since the recording of this Supplemental Declaration. The Townhome Association shall provide a copy of the current Rules and Regulations to any prospective purchaser Member or Mortgagee upon written request and payment of the reasonable cost of such copy.

### **Article V.      Architecture and Landscaping**

#### 5.1. General.

No structure or thing, including but not limited to fences, shall be placed, erected, or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on any Lot except pursuant to approval and in compliance with this Article and the Architectural Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any

Owner may remodel, paint, or redecorate the interior of a dwelling located on his or her Lot without approval; provided that modifications to the interior of a dwelling visible from outside the structure shall be subject to approval.

Any improvements constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by Declarant or its designee in its sole discretion.

This Article shall not apply to Declarant's activities or to the Association's activities during the Declarant Control Period.

## 5.2. Architectural Review.

5.2.1 By Declarant. Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that, as the developer and owner of real estate in the vicinity of and within the Community, Declarant has a substantial interest in the quality and appearance of improvements within the Community, and in determining that they enhance Declarant's reputation as a developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, no Owner shall commence any activity within the scope of this Article on his or her Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue or as long as Declarant owns any portion of the real property described in **Exhibit A or B** or has the right to expand The Community pursuant to Section 10.1, unless earlier terminated by Declarant by a Recorded Document.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to any other Person or committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (a) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (b) Declarant's right to veto any decision which Declarant determines, in its sole and exclusive discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of any other Person or committee shall be limited to such matters as are specifically delegated to it by Declarant.

5.2.2. Architectural Review Committee. Upon delegation by Declarant or upon expiration of the Declarant Control Period, the Association, acting through an architectural review committee ("ARC") appointed by the Board, shall assume jurisdiction over architectural matters. The ARC shall consist of at least three, but not more than seven, Persons who shall serve and may be removed and replaced at the Board's discretion. The members of the ARC need not be Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Association or expiration of the Declarant Control Period, the Association shall have no jurisdiction over architectural matters.

5.3 Reviewer. For purposes of this Article, the committee or entity having jurisdiction over architectural matters in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

5.4 Guidelines and Procedures.

5.4.1 Architectural Guidelines. Declarant may prepare Architectural Guidelines applicable to Lots which may contain general provisions applicable to all Lots as well as specific provisions which vary among the Lots according to location, Neighborhood, use, or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application. Further, the Architectural Guidelines may be more restrictive than guidelines followed by Horry County or as set forth in the International Builder's Code.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the real property described in **Exhibit A** or **B** or has a right to expand the Community pursuant to Section 10.1, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend the Architectural Guidelines. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the Board's consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable notice during the Association's business hours. In Declarant's discretion, such Architectural Guidelines may be recorded at the Horry County Registry, in which event the recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

5.4.2 Procedures. Except as the Architectural Guidelines otherwise specifically provide, no activity described in Section 5.1 shall commence on any Lot until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as deemed necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements. Subject to Declarant's veto power described below, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures described in this Article.

The Reviewer shall make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Reviewer may (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; (c) disapprove the application; or (d) request further or additional information. The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three business days after the ARC has approved an application. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have Ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

In any event, the Reviewer shall notify the applicant in writing of a final determination within forty-five (45) days after its receipt of a completed application and all required information. In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Reviewer has granted a variance pursuant to Section 5.6.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Member.

The Reviewer may by resolution exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### 5.5 No Waiver of Future Approvals.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 5.6 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### 5.7 Limitation of Liability.

The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements, (c) that Lots are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Lots or the Common Area are protected, or (e) that no defects exist in approved construction.

Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board, the ARC, and any members thereof as provided in the Bylaws.

#### 5.8 Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that such Owner's Lot has no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within Thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall stop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

## 5.9 View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

## **Article VI. Maintenance and Repair**

6.1 General All areas within the Property and all areas covered by easements or licenses owned or held by the Townhome Association shall be maintained to the Townhome Community-Wide Standard, and to all other standards stated in this Supplemental Declaration, the Master Declaration, any Supplemental Declaration and the Bylaws, Rules and Regulations of the Townhome Association. The Townhome Association and the individual Owners shall be responsible for such maintenance, as provided in this Article VI.

6.2 Townhome Association Responsibility. The Townhome Association shall maintain all landscaped rights-of-way and all entry features; all streets and roadways within any easement or licenses owned or held by the Townhome Association, unless such streets or roadways are maintained by some governing authority; all Townhome Common Areas, and all landscaping, paving, streets, structures and improvements of any nature located thereon; and all ponds, streams and culverts located on the Townhome Property which serve as part of any drainage and storm-water retention system. In addition, the Townhome Association shall provide exterior maintenance to each Townhome Building and Townhome Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior Townhome Building surfaces, and care for grass, including mowing, weed trimming and edging on lawn areas, leaf blowing, and irrigating lawns on a regular basis; provided that the Townhome Association shall not be responsible for providing exterior maintenance of any improvements and betterments made and installed by individual Owners nor shall the Townhome Association be responsible for any portion of the Townhome Lot enclosed with a fence. The Townhome Association shall not be responsible for any such replacement of the above items until the normal life of such items has expired. Such exterior maintenance by the Townhome Association shall not include glass surfaces. In order to enable the Townhome Association to accomplish the foregoing, a perpetual easement in gross over all the Townhome Lots and Townhome Common Area is hereby granted to the Townhome Association for the purpose of unobstructed access over and upon each Townhome Lot and Townhome Common Area at all reasonable times to perform maintenance as provided in this Article. The Owner of any Townhome Lot may, at his or her election, plant harmonious trees, shrubs, flowers and grass in his or her rear yard and maintain portions or all of his or her rear yard, provided that such maintenance by the Owner does not hinder the Townhome Association in performing its maintenance of the exterior of the building and the remaining spaces that are not enclosed with a fence. No such maintenance by an Owner shall reduce any assessments payable by him to the Townhome Association. If, in the opinion of the Townhome Association, any such Owner fails to maintain his or her rear yard in a neat and orderly manner, the Townhome Association may revoke the Owner's maintenance rights for a period of not more than one year. In the event that the need for maintenance or repair by the Townhome Association pursuant to this subsection is caused through the willful or negligent act of any Owner, his or her family, guests, invitees or delegates, the cost of such maintenance and repair shall be assessed against the Townhome Lot(s) of such Owner(s) as a Specific Assessment pursuant to subsection 6.4 below, and may be collected by the Townhome Association as provided in Article IX below.

The Townhome Association shall also be responsible for paying all ad valorem taxes levied against by Townhome Common Areas by the applicable governing authority, if any. Upon default of the Townhome Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Townhome Common Area or assessments levied for public improvements to the Townhome Common Area, which default shall continue for a period of six (6) months, each Owner of a Townhome Lot shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Townhome Lots in the Townhome Community. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien, subordinate to all mortgages on the Townhome Lot of the then-Owner, his or her heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Townhome Lot of the Owner.

The Townhome Association shall also be responsible for ensuring compliance with road maintenance obligations over Gray Heron Drive and Club Course Drive pursuant to Section 4 of that Agreement Regarding Lots 105 and 106 in the Dye Estates of record at Deed Book 3989 Page 1899, Horry County Register of Deeds.

6.3 Owner's Responsibility. Except as provided in subsection 6.2 above, each Owner shall maintain his or her Townhome Lot and all unimproved Townhome Common Area along the boundaries of his or her Townhome Lot (e.g., area between lot line and curb). Each owner shall maintain all landscaping, paving, structures and improvements of any nature whatsoever located on his or her Townhome Lot. Each Owner's maintenance of his or her Townhome Lot and adjoining, unimproved Townhome Common Area shall include but not be limited to:

- a. Keeping the area free and clear of all litter, trash, refuse and wastes;
- b. Keeping exterior lighting and mechanical facilities in working order;
- c. Keeping lawn and garden areas alive, including repair and replacing grass;
- d. Weeding garden areas and flower beds;
- e. Removing and replacing any dead plant or lawn material;
- f. Keeping vacant land well maintained and free of trash and weeds;
- g. Keeping parking areas and driveways in good repair;
- h. Complying with all governmental health and police requirements; and
- i. Repair of exterior damage to all structures caused by Owner.

6.4 Townhome Association's Right to Perform Owner's Responsibility. If any Owner or Occupant of a Townhome Lot fails to perform any of the duties or responsibilities set forth in this subsection, then the Townhome Association or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail, addresses to the party to whom it is intended to be delivered at that party's current address as shown by the records of the Townhome Association, and sent by certified mail, return receipt requested), perform the care and maintenance required

or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Declarant or the Townhome Association, acting through its authorized agent or agents, shall have the right and power to enter onto the Townhome Lot in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise at any person. All Owner(s) of a Townhome Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Townhome Association or the Declarant in performing such work computed at a rate not to exceed sixteen percent (16%) per annum from the date(s) such amounts are expended until repaid to the Townhome Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and shall reimburse the Townhome Association or the Declarant, as the case may be, on demand for such costs and expense (including interest as above provided). If such Owner shall fail to reimburse the Townhome Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by the Townhome Association or Declarant, the Townhome Association has performed the work on the Townhome Lot of the delinquent Owner(s), the Townhome Association may charge a Specific Assessment for such amounts against the Townhome Lot of such Owner(s), and proceed to collect such Specific Assessment as provided in Article IX below.

6.5 Cost of Maintenance. All costs of the Townhome Association in meeting its responsibilities pursuant to this Section shall be Townhome Common Expenses.

6.6 Conveyance of Townhome Common Area to Townhome Association; No Implied Rights. Declarant, or the owner of the property with the consent of the Declarant, may transfer or convey to the Townhome Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Townhome Association upon delivery of any personal property or upon recordation with the Horry County Registry of a non-warranty deed conveying any interest in real property, and the property shall thereafter be Townhome Common Area to be used and, if and as provided in this Article VI, maintained by the Townhome Association for the benefit of its Members. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Townhome Association regardless of whether or not any such property has been made available for the use of Owners. Declarant, or the owner of the property with consent of Declarant, may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Townhome Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Townhome Association of any property shall create any rights, easements or licenses, in the Townhome Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Townhome Association or the Owners, as the case may be, by an instrument recorded in the Horry County Register of Deeds.

6.7 Liability. Owners, Occupants and their guests shall use the Townhome Common Area and all portions of the Townhome Community not contained within a Townhome Lot at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants shall have an affirmative duty and responsibility to inspect the Townhome Common Area and all portions of the Townhome Community not contained within a Townhome Lot for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof. The Townhome Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Townhome Association shall not be liable for injury or damage to any Person or property:



(a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Townhome Association or from any portion of the Townhome Common Area, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Townhome Association, becoming out of repair. Nor shall the Townhome Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

6.8 Party Walls. Each wall which is built as a part of the original construction of a Townhome Building upon the Townhome Property and placed on a boundary line between Townhome Lots, and all reconstruction or extension of such walls, shall constitute party walls. Except as provided in this Article, the general rules of law regarding party walls, lateral support in below-grade construction and liability for property damage due to negligence or willful acts or omissions shall apply to party walls on the Townhome Property. The following rules and principles shall also apply to the party walls:

6.5.1 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall or benefit therefrom in proportion to such use and benefit.

6.5.2 Construction and Reconstruction of Party Wall. The Owner of any Townhome Lot may construct, reconstruct, or extend a party wall in any direction (subject to and within the limitation of architectural control and other limitation of the Master Declaration or this Supplemental Declaration) with the right to go upon the adjoining Townhome Lot to the extent necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Townhome Lot to as near the same condition as prevailed before the commencement of such construction as is reasonably practicable.

6.5.3 Weatherproofing. Notwithstanding any other provision of this Section, an Owner who, by his or her negligence or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6.5.4 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6.5.5 Certification by Adjoining Townhome Lot Owner that No Contribution is Due. If any Owner desires to sell his or her Townhome Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charges; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

6.5.6 Dispute Resolution. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each Bound Party covenants and agrees to use good faith efforts to resolve their Claims using the procedures set forth in Article XIII of this Supplemental Declaration.

## **Article VII. Insurance.**

### **7.1 Townhome Association's Responsibility.**

7.1.1 The Townhome Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available.

a. Blanket property insurance for all insurable improvements on the Townhome Common Elements, Townhome Buildings and Townhome Lots insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. All property insurance policies the Townhome Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements at the time of the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. This coverage shall not, however, include any improvements or betterments installed by an Owner or any of the personal property belonging to an Owner, whether or not located inside a Townhome Unit. The Townhome Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Townhome Association under any such policies and shall have full power to receive and to deal with such proceeds. The insurance proceeds shall be used by the Townhome Association for the repair or replacement of the property for which the insurance was carried, except as otherwise provided in this Section.

b. Commercial general liability insurance on the Townhome Common Area and on the portions of the Townhome Buildings for which the Townhome Association is responsible for maintaining. Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Townhome Common Area. The Board shall use its business judgment in deciding upon per occurrence limits for such coverage and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insureds, Declarant, any property manager, the Townhome Association, the Board, the officers of the Townhome Association, and their respective representatives, members, agents, and employees with respect to any liability arising out of the maintenance or use of the Townhome Common Area.

c. Workers' compensation insurance and employers' liability insurance, if and to the extent required by law.

d. Directors' and officers' liability coverage.

e. Commercial crime insurance, including fidelity insurance covering all persons responsible for handling Townhome Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Townhome Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

f. Such additional insurance as the Board, in its business judgment determines advisable.

7.1.2 Premiums for all insurance shall be Townhome Common Expenses unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Townhome Association shall include such premiums in the assessments it levies. The Board shall review the limits of all Townhome Association insurance policies at least once a year and shall adjust the policy limits as the Board deems necessary or appropriate.

7.1.3 The Townhome Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with replacement costs in the Horry County area. All Townhome Association policies shall provide for a certificate of insurance to be furnished to the Townhome Association and, upon request, to each Member insured.

7.1.4 The policies may provide for a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Townhome Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Townhome Lots as a Specific Assessment pursuant to Article IX below.

7.1.5 All insurance coverage obtained by the Board shall:

a. be written with a company authorized to do business in South Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate and carries a Best rating of AA or better;

b. be written in the name of the Townhome Association as trustee for the benefited parties. (policies on the Townhome Common Areas shall be for the benefit of the Townhome Association and its Members);

c. not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

d. contain an inflation guard endorsement;

e. include an agreed amount endorsement, if the policy contains a coinsurance clause;

f. provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Townhome Association or interest in the Townhome Common Area as a Member in the Townhome Association (provided, this provision shall not be construed as giving any Owner any interest in the Townhome Common Area other than that of a Member);

g. include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Townhome Association to cure the defect or violation and allowance of a reasonable time to cure; and

h. include an endorsement precluding the insurer from denying a claim by an Owner or conditioning recovery under the policy based upon or due to the negligent acts or omissions of the Townhome Association or any other Owner.

7.1.6 In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds for claims arising in connection with the ownership, existence, use or management of the Townhome Common Area and provide:

- a. a waiver of subrogation as to any claims against the Townhome Association's board of directors, officers, employees and its manager, or the Owners and their tenants, servants, agents and guests;
- b. a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and
- c. an endorsement requiring at least 30 days' prior written notice to the Townhome Association of any cancellation, substantial modification or non-renewal

## 7.2 Owner's Responsibility.

7.2.1 Each Owner of a Townhome Lot, to the extent not insured by policies of the Townhome Association, shall be responsible for obtaining and maintaining at all times insurance at their own expense covering all portions of the Owner's Townhome Lot, including structures and improvements on the Townhome Lot and Owner's personal property. In addition, to the extent not insured by policies of the Townhome Association or the extent insurable losses result in the payment of deductibles under the Townhome Association's policies, every Owner shall obtain and maintain at all times insurance covering consequential damages to any other Townhome Lot or the Townhome Common Area due to occurrences originating with the Owner's Townhome Lot and caused by the Owner's negligence, the Owner's failure to maintain the Owner's Townhome Lot or any other casualty within the Townhome Lot, which caused damage to any other Townhome Lot or Townhome Common Area. Additionally, each Owner of a Townhome Lot may, at their option, obtain insurance at their own expense to cover their personal liability, and to provide such other coverage as they may desire

7.2.2 At the Townhome Association's request, Owners shall file a copy of each individual policy or policies covering their Townhome Lot and personal property with the Board within ten (10) days after receiving such request. Such Owner shall promptly notify the Townhome Association in writing in the event such policy is canceled.

7.2.3 Upon resolution of the Board and at least sixty (60) days' prior written notice to each Owner, the Townhome Association may, but shall not be required to, obtain as a Townhome Common Expense, a blanket insurance policy providing property insurance coverage for all structure on Townhome Lots (exclusive of improvements made by Owners). In such event, the Owners shall be relieved of their insurance responsibility hereunder to the extent the Townhome Association assumes such responsibility. Following such an assumption of insurance responsibility, the Townhome Association may at any time, upon not less than thirty (30) days' written notice to each Owner, discontinue such blanket insurance coverage, and in such event, each Owner shall immediately obtain in his or her own name and at his or her own expense the insurance coverage for such Owner's Townhome Lot required hereunder.

7.2.4 In the event of damage or destruction to a Townhome Lot, the Owner shall have sixty (60) days to complete any necessary repairs or reconstruction. The Owner shall pay any costs that are not covered by insurance proceeds.

## **Article VIII. Repair and Reconstruction of Townhome Association Property.**

The Townhome Association shall have the authority and the duty to repair or reconstruct Townhome Common Area or other property which the Townhome Association is obligated to insure ("Insured Property") that is damaged or destroyed unless such repair or reconstruction would be illegal under any state or local ordinance governing health or safety, or Members representing at least eighty percent (80%) percent of the total vote of the Townhome Association vote not to repair or reconstruct.

Except as otherwise provided in this Section, the Board shall diligently pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Townhome Association may take all necessary or appropriate action to affect such repair or reconstruction. Such repair or reconstruction shall be in accordance with the original plans and specifications unless other plans are approved by the Board.

The proceeds of any insurance collected shall be available to the Townhome Association for the purpose of repair or reconstruction of Insured Property. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board, pursuant to Section IX may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article IX. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. The insurance proceeds held by the Townhome Association and the amounts of any such Special Assessments shall constitute a fund for the payment for costs of repair or reconstruction after casualty. If a balance exists after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners of the Townhome Lots in proportion to the contributions made by each Owner to the Townhome Association.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the Townhome Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Townhome Community-Wide Standard. The cost of removal and landscaping shall be paid for with insurance proceeds. The Townhome Association shall retain the remaining proceeds in its general or other funds or shall allocate or distribute such funds as the Board determines appropriate, provided any such distribution of insurance proceeds shall be proportionate to the Members' interests.

## **Article IX. Assessments and Townhome Association Finances**

9.1. Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Townhome Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

9.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Townhome Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Townhome Association any and all assessments levied by the Townhome Association hereunder (including, without limitation, Base Assessments, Special Assessments, Specific Assessments, Ad Valorem Tax Assessments and Neighborhood Assessments) and any other charges established

pursuant to the terms of this Supplemental Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Supplemental Declaration and the Bylaws. In addition to the foregoing, the Board may charge each Owner a service, collection, consulting or administration fee (an "Administrative Fee") in an amount to be determined by the Board from time to time in connection with the assessment and collection of the assessments provided for in this Supplemental Declaration.

Each such assessment, together with late charges (in an amount determined by the Board from time to time, but not to exceed the greater of sixteen percent (16%) of any assessment installment unpaid or such higher amount as may be permitted by the South Carolina Code of Laws), interest (at a rate not to exceed the lesser of the maximum rate permitted by law or sixteen percent (16%) per annum or such other amount as may be permitted by the South Carolina Code of Laws), costs of collection, reasonable attorney's fees actually incurred and any Administrative Fee, shall be the personal obligation of the Person who was the Owner of such Townhome Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Townhome Lot and his or her successor-in-title shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, further, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any First Mortgagee or other purchaser taking title through foreclosure proceedings or deed in lieu of foreclosure.

No Owner may waive or otherwise be exempt from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Townhome Lot or non-use of the Townhome Common Area. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Townhome Association to take some action or perform some function required to be taken or performed by the Townhome Association, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Townhome Association, or from any action taken by the Townhome Association to comply with any law, ordinance or directive of any governmental or municipal authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

Assessments shall be paid at a uniform rate per Townhome Lot in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of assessments for delinquents; provided however, (a) notwithstanding any provision in this Supplemental Declaration to the contrary, assessments to pay a judgment against the Townhome Association may be made only against the Townhome Lots in the Townhome Community at the time the judgment was entered; and (b) if any common expense is caused by the negligence or misconduct of any Owner or Occupant, the Townhome Association may assess the expenses exclusively against that Owner's Townhome Lot, as more particularly set forth in Section 9.3 hereof.

All sums assessed against any Townhome Lot pursuant to this Supplemental Declaration, together with late charges (in an amount determined by the Board from time to time, but not to exceed sixteen percent (16%) of any installment unpaid or such higher amount as may be permitted by the South Carolina Code of Laws), interest on the principal amount due (at a rate not to exceed the lesser of the maximum rate permitted by law or sixteen percent (16%) per annum or such higher amount as provided in the South Carolina Code of Laws), costs of collection, reasonable attorney's fees actually incurred and any Administrative Fee when remaining unpaid for thirty (30) days or longer, shall be secured by a lien on such Townhome Lot in favor of the Townhome Association when the Townhome Association files a claim of lien in the Horry County, South Carolina land records in the manner provided by law, if filing of such lien is required by law, otherwise such lien shall automatically attach. Such lien shall be superior to all other

liens and encumbrances on such Townhome Lot, except for (i) liens and encumbrances recorded before the docketing of the claim of lien, and (ii) liens for real estate taxes and other governmental assessments and charges against the Townhome Lot. This Section does not affect the priority of mechanics' or materialmens' liens.

All persons acquiring a lien or encumbrance on any Townhome Lot after this Supplemental Declaration has been recorded in the Horry County Register of Deeds shall be deemed to consent that such lien or encumbrance shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such lien or encumbrance.

Notwithstanding anything contained in this Section 9.2 to the contrary, the Owner's duty to pay assessments to the Townhome Association does not abrogate its duty to concurrently pay assessments directly to the Master Association.

### 9.3. Budgeting and Allocating Townhome Common Expenses.

Until the Townhome Association first levies assessments, Declarant shall be responsible for all Townhome Common Expenses. Thereafter, assessments for Townhome Common Expenses shall be levied at least annually in accordance with this Article.

At least Sixty (60) days before the beginning of each fiscal year, the Board shall prepare and approve a budget of the estimated Townhome Common Expenses for the coming year. The budget shall include any contributions to be made to a reserve fund for repair and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset and each asset's expected repair or replacement cost. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Townhome Lots and the amount to be generated through the levy of Base Assessments, Special Assessments and Ad Valorem Tax Assessments against the Townhome Lots, as authorized in Article IX. After the Declarant Control Period terminates, the annual Base Assessments shall not be increased by an amount greater than twenty (20%) percent of the annual Base Assessment of the immediately preceding calendar year.

The Townhome Association is hereby authorized to levy Base Assessments equally against all Townhome Lots subject to assessment to fund the Townhome Common Expenses. In determining the Base Assessment rate per Townhome Lot, the Board may consider any assessment income expected to be generated from any additional Townhome Lots reasonably anticipated to become subject to assessment during the fiscal year. Base Assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Townhome Common Area, operating expenses of the Townhome Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. Base Assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities and other services provided by the Townhome Association, if any, cleaning and janitor services, landscape maintenance, costs and expenses associated with the operation and maintenance of the storm water drainage facilities and storm water detention/retention pond(s) in the Townhome Community, and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Townhome Association against Owners and others.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by paying any deficit between the Townhome Common Expenses and Townhome Association funds collected pursuant to the current year's budget, or any portion of any such deficit (in addition to any amounts paid by Declarant under Section 9.7), which may be a contribution, an advance against future assessments due from Declarant or a loan, in Declarant's discretion. Any such deficit payment shall be disclosed as a line item in the income portion of the budget. Payment of such deficit, or portion thereof, in any year shall not obligate Declarant to continue payment of such deficit in future years, unless otherwise provided in a written agreement between the Townhome Association and Declarant.

9.4. Special Assessments.

In addition to other authorized assessments, the Townhome Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership. Except as otherwise specifically provided in this Supplemental Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the Board and the consent of Declarant during the Declarant Control Period. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.5. Specific Assessments.

The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Townhome Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Supplemental Declaration, the initiation fee and the costs of maintenance performed by the Townhome Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Townhome Association expenses as follows: (a) expenses of the Townhome Association which are incurred to cover the costs, including overhead and administrative costs, of providing services to Townhome Lots upon request of an Owner pursuant to any menu of special services which the Townhome Association may offer (which might include the services listed in Section 6.3); (b) expenses of the Townhome Association which are incurred to cover costs incurred in bringing the Townhome Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Townhome Lot, their agents, contractors, employees, licensees, invitees, or guests; and (c) expenses of the Townhome Association which are incurred as a result of the conduct of a particular Owner or Occupant or the guests, tenants, invitees or licensees of such Owner or Occupant may be assessed against the Townhome Lot of such Owner or Occupant.

9.6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Townhome Common Areas by the applicable governing authority, if any, shall be Townhome Common Expenses, and the Townhome Association may at any time of the year levy against Owners equally an "Ad Valorem Tax Assessment", in addition to the annual Base Assessments, which shall be in an amount sufficient to pay the ad valorem taxes not included as a component of the annual Base Assessments.

9.7. Neighborhood Assessments.



The Board may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Townhome Association for the primary benefit of property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors for expense items such as maintenance, insurance or special services. In addition, the Board shall levy a Neighborhood Assessment upon the request of the Owners holding two-thirds (2/3) of the total Townhome Association vote applicable to Townhome Lots within a Neighborhood

9.8. Authority to Assess Owners; Time of Payment. Declarant hereby establishes and the Townhome Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Townhome Lot on the first day of the month following the date that the Townhome Lot is first occupied for residential purposes. A Townhome Lot shall be deemed to be occupied for residential purposes when it has been improved with a dwelling for which a certificate of occupancy has been issued and has been conveyed to an Owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. Any Townhome Lot which is being used by Declarant or a builder approved by Declarant as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Supplemental Declaration whether owned by Declarant or a builder approved by Declarant, so long as such Townhome Lot is being used as a model home and is not occupied for residential purposes. The first annual Base Assessment levied on each Townhome Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Townhome Lot.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Townhome Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board provides otherwise, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Townhome Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

9.9. Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Townhome Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Townhome Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Townhome Lot pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Townhome Lot of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such Townhome Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Townhome Lot to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Townhome Lot of any personal

obligation or relieve such Townhome Lot or the then Owner of such Townhome Lot from liability for any assessment authorized hereunder that becomes due after such sale and transfer.

9.10. Remedies of the Townhome Association. Any sums or charges (including assessments or installments thereof) assessed against any Townhome Lot pursuant to this Supplemental Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than ten (10) days shall incur a late charge (in an amount determined by the Board from time to time, but not to exceed sixteen percent (16%) of any installment unpaid or such higher amount as may be permitted by the South Carolina Code of Laws) and interest (at a rate not to exceed the lesser of the maximum rate permitted by law or sixteen percent (16%) per annum or such higher amount as may be permitted by the South Carolina Code of Laws). The Townhome Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date (the "Delinquency Notice"). The Delinquency Notice shall state: (i) the outstanding balance due as of the date of the Delinquency Notice; (ii) that the member has fifteen (15) days from the mailing of the Delinquency Notice (the "Grace Period") to pay the outstanding balance without being required to pay attorneys fees and court costs; (iii) the name of and contact information for a representative of the Townhome Association whom the member can contact to discuss a payment schedule for the outstanding balance; provided however, the Townhome Association shall not be required to permit payment of the outstanding balance in installments; and (iv) that if the outstanding balance is not paid within the Grace Period, the Townhome Association intends to seek payment of attorneys' fees and court costs. The Delinquency Notice must be sent by first class mail to the Townhome Lot of such member and, if different, to the mailing address of the member in the Townhome Association's records. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and (i) to the extent permitted by applicable law, a lien, as herein provided, shall attach; and (ii) a claim of lien, as herein provided, may be filed in the Horry County Register of Deeds in the manner provided by law. Such lien shall include, interest, all late charges from the date first due and payable, any Administrative Fee, all costs of collection, and, if the Owner has been provided with a Delinquency Notice and failed to pay the outstanding balance set forth therein within fifteen (15) days from the mailing of the Delinquency Notice, court costs and reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law.

If any sum assessed against any Townhome Lot pursuant to this Supplemental Declaration remains unpaid after sixty (60) days from the due date, the Townhome Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. The Townhome Association may foreclose the claim of lien in like manner as a as the foreclosure of mortgages on time shares, or for the foreclosure of mortgages by judicial proceedings, or in any other manner permitted by applicable law. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Townhome Association or its agents, to the extent permitted by this Supplemental Declaration and applicable law, the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as foreclosure of mortgages on time shares, or for the foreclosure of mortgages by judicial proceedings, or in any other manner permitted by applicable law. The lien provided for in this Article shall be in favor of the Townhome Association and shall be for the benefit of all other Owners. The Townhome Association, acting on behalf of the Owners, shall have the power to bid on the Townhome Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. The Townhome Association may further seek a deficiency judgment following any foreclosure, and recover the Townhome Association's costs of collection and reasonable attorneys' fees.

In addition to the foregoing, in the event that an Owner is at least thirty (30) days delinquent in the payment of any assessment or charge owed to the Townhome Association, the Townhome Association may suspend the right of such Owner to vote, suspend the right of such Owner to use and enjoy the Townhome Common Area and the suspend any services or utilities which may be provided to Townhome Lots in the Townhome Community, subject to any notice requirements imposed by the institutional providers providing such services or utilities in the Townhome Community and in accordance with the notice and hearing procedure in the Bylaws.

**LIENS ARE EXEMPT FROM THE SOUTH CAROLINA HOMESTEAD EXEMPTION AND WAIVER OF HOMESTEAD EXEMPTION.** Any lien provided for herein shall be exempt from the South Carolina Homestead Exemption, if such lien is foreclosed upon and each Townhome Lot Owner by acceptance of the deed to a Townhome Lot waives any right to assert a Homestead Exemption.

The laws of South Carolina provide that in any real estate foreclosure proceeding, a defendant against whom a personal judgment is taken or asked may within thirty (30) days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED, TO THE EXTENT ALLOWED BY SOUTH CAROLINA LAW, HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE TOWNHOME LOT.**

9.11. Budget Deficits During Declarant Control.

During the Declarant Control Period, Declarant may (but shall not be required to):

a. Declarant may advance funds to the Townhome Association sufficient to satisfy the deficit, if any, between the Townhome Association's actual operating expenses and the sum of the Base, Special, Neighborhood and Specific Assessments collected by the Townhome Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Townhome Association in favor of Declarant. Declarant's failure to obtain a promissory note shall not invalidate the debt.

b. Declarant may cause the Townhome Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Townhome Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Townhome Common Area or any of the improvements maintained by the Townhome Association shall be given in connection with such loan.

Declarant may acquire property for, or provide services to, the Townhome Association or the Townhome Common Area. Declarant shall designate the value of the property or the services provided, and such amounts, at Declarant's request, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

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

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

9.13. Statement of Account.

Upon written request of any Member, Mortgagee, prospective Mortgagee or prospective purchaser of a Townhome Lot, the Townhome Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Townhome Lot, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting person personally or by certified mail, first-class postage prepaid, return receipt requested. The Townhome Association may require the payment of a reasonable processing fee for issuance of such statement.

Such statement shall bind the Townhome Association in favor of persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within fourteen (14) days of receipt of the request, all unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquires its interest after requesting such statement.

9.14. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Specific Assessments, Special Assessments, Ad Valorem Tax Assessments and Neighborhood Assessments:

- a. all Townhome Common Area;
  - b. any property dedicated to and accepted by any governmental authority or public utility;
- and
- c. any and all property owned by the Declarant.

9.15. Capitalization of Townhome Association.

Upon the sale of each and every Townhome Lot in the Townhome Community after it has been improved with a residence for which a certificate of occupancy has been issued, an initiation fee in the amount of Two Thousand and No/100<sup>th</sup> Dollars (\$2,000.00) shall be collected from the purchaser at the closing of such sale for the benefit of the Townhome Association (or if not collected at the closing, shall be paid immediately on demand by the Townhome Association). This initiation fee shall be a Specific Assessment against the Townhome Lot and shall be in addition to, not in lieu of, the annual Base Assessment. The initiation fee shall not be considered an advance payment of the annual Base Assessment. This initiation fee shall be deposited into a specially designated reserve account of the Townhome Association and shall be for the purposes of ensuring that the Townhome Association will have cash available to pay Townhome Common Expenses, meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors. The amount of the initiation fee may be determined in the sole and exclusive discretion of the Board.

**Article X.                   Expansion of the Community**

10.1. Expansion by Declarant.

Until all property described in **Exhibit B** has been subjected to this Declaration or twenty (20) years after the Recording of this Declaration, whichever is earlier, Declarant reserves the right, but not the obligation, to subject unilaterally to the provisions of this Declaration all or any portion of the real property described in **Exhibit B** which Declarant currently owns or to which Declarant may obtain title in the future. Declarant may transfer or assign this right to subject property to this Declaration, provided that the transferee or assignee is the developer of or owns at least a portion of the real property described in **Exhibit B**, and provided that the transfer or assignment is evidenced by a Recorded Document.

Declarant shall subject additional property to this Declaration by recording an Annexation Declaration describing the property being subjected. Such Annexation Declaration shall not require the Members' consent but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the recording of such Annexation Declaration unless otherwise provided therein.

10.2. Expansion by the Association.

Upon termination of the Declarant Control Period, the Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, if authorized by the affirmative vote of Members representing Sixty-seven (67%) percent of the total existing votes in the Association.

The Association shall subject such property by recording an Annexation Declaration describing the property being subjected. Any such Annexation Declaration shall be executed by the Association and the owner of the subject property, and shall be certified by the Secretary of the Association to have been authorized by the requisite vote of the Members of the Association.

10.3. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional real property to the Community pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any such withdrawal shall be accomplished by filing an amendment to the Declaration executed by Declarant describing the property to be removed. Such amendment shall be executed by the Declarant and the owner(s) of the property being removed if said property is not owned by the Declarant and shall not require the vote or consent of members of the Association and shall be effective upon the filing of record in the Office of the Register of Deeds of Horry County unless a later effective date is provided therein.

**Article XI. Declarant Rights.**

11.1. Reasonable Rights To Develop.

Declarant, builders approved by Declarant and/or their contractors or subcontractors may construct improvements to or within the Townhome Community including to the Townhome Lots. The completion of such construction and the sale or other disposal of the Townhome Lots is essential to the establishment and welfare of the Townhome Community. Therefore, during the Declarant Control Period, nothing in this Supplemental Declaration or the other Governing Documents, except the Master Declaration, shall be construed to:

a. prevent Declarant, builders approved by Declarant, or their contractors or subcontractors from doing whatever is reasonably necessary or advisable in connection with the commencement or completion of the above-described work throughout the Townhome Community;

b. prevent Declarant or its representatives from erecting, constructing, and maintaining anywhere in the Townhome Community such structures as reasonably may be necessary for the conduct of its business of completing the work, establishing Blackwater Townhomes as a residential community and disposing of the Townhome Lots by sale, lease, or otherwise;

c. prevent Declarant and/or builders approved by Declarant from maintaining such signs and conducting such activities in any part of the Townhome Community owned by Declarant and/or builders approved by Declarant as Declarant and/or builders approved by Declarant may deem to be reasonably necessary for the sale, lease, or disposition of Townhome Lots; or

d. prevent Declarant and/or builders approved by Declarant from placing and utilizing on Townhome Lots or other property which it owns one or more mobile trailers or temporary structures as sales offices or for construction activities.

Nothing in this Section shall give Declarant and/or builders approved by Declarant the right to damage any Townhome Lot or other property not owned by Declarant and/or builders approved by Declarant.

#### 11.2. Marketing and Sales Activities.

During the Declarant Control Period, Declarant and builders approved by Declarant may construct, relocate, maintain and carry on upon any Townhome Lot Declarant owns, the builder approved by Declarant owns or upon portions of the Townhome Common Area, such facilities and activities as may be reasonably required, convenient or incidental to the construction, marketing or sale of Townhome Lots, as determined in Declarant's sole opinion. Such facilities and activities may include, without limitation, business offices, signs, model homes, and sales offices. There shall be no limit on the number or size of such facilities. Declarant and builders approved by Declarant shall have easements for access to and use of such facilities. Declarant reserves the right to remove any personal property used in connection with its activities on the Townhome Common Area upon termination of its rights under this Section.

#### 11.3. Construction of Improvements.

During the Declarant Control Period, Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Townhome Common Area for the

purpose of making, constructing and installing such improvements to the Townhome Common Area as it deems appropriate in its sole discretion.

11.4. Right to Approve Additional Covenants.

During the Declarant Control Period, no person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Townhome Community without Declarant's prior written approval. Any instrument recorded without such consent shall be void and of no force and effect unless Declarant subsequently consents in a Recorded Document.

11.5. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights or obligations set forth in this Supplemental Declaration or the Bylaws may be transferred in whole or in part to other persons; however, the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Supplemental Declaration or the Bylaws. No such transfer or assignment shall be effective unless evidenced by a Recorded Document. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Supplemental Declaration where Declarant does not intend to transfer such right in its entirety. In such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

11.6. Exclusive Rights to Use Name of Development.

During the Declarant Control Period, no person or entity shall use the name "Blackwater Townhomes" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Blackwater Townhomes" in printed or promotional matter where such term is used solely to specify that particular property is located within the Townhome Community and the Townhome Association shall be entitled to use the words "Blackwater Townhomes" in its name.

11.7. Right to Approve Changes in Townhome Community Standards.

During the Declarant Control Period, no amendment to or modification of any Rules and Regulations or Architectural Guidelines shall be effective without Declarant's prior written approval.

11.8. Easement to Inspect and Right to Correct.

11.8.1. Easement. Declarant reserves for itself and such other persons as it may designate perpetual non-exclusive easements throughout The Townhome Community to the extent reasonably necessary for the purposes of accessing, inspecting, testing, redesigning or correcting any portion of the Townhome Community including Townhome Lots and Townhome Common Areas. Declarant shall have the right to redesign or correct any part of the Townhome Community, including Townhome Lots owned by Declarant and Townhome Common Areas.

11.8.2. Right of Entry. Entry onto a Townhome Lot shall be after reasonable notice, except in an emergency. Entry into a structure on a Townhome Lot shall be only after Declarant notifies the

Townhome Lot's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Townhome Lot to perform such activities.

11.8.3. Damage. Declarant shall promptly repair any damage to a Townhome Lot or the Townhome Common Area resulting from the exercise of the easement or right of entry described in subsections 11.8.1 and 11.8.2 of this Section at its own expense. The exercise of these easements shall not unreasonably interfere with the use of any Townhome Lot, and entry onto any Townhome Lot shall be made only after reasonable notice to the Owner or Occupant.

11.9. INTENTIONALLY DELETED.

11.10 Appointment or Removal of Members of the Board and officers. During the Declarant Control Period, Declarant shall have the right to appoint or remove any member of the Board or officer of the Townhome Association.

11.11 Amendment to Declaration. During the Declarant Control Period, Declarant shall have the right to amend or rescind and restate this Supplemental Declaration by a Recorded Document, without approval or joinder of the Townhome Association or any other Party, except as provided in Section 12.2 below.

11.12 Review of Design and Construction. During the Declarant Control Period, Declarant shall have the right to control the design, quality, installation and construction of improvements within the Townhome Community as provided in Article V above.

**Article XII. Easements and Storm Water Covenants**

12.1. Owners' Easements of Enjoyment. Except as limited by this Supplemental Declaration, Declarant hereby reserves unto itself, its successors and assigns, and grants to the Townhome Association and to every Owner a non-exclusive easement of use and enjoyment in and to the Townhome Common Area which shall be appurtenant to and shall pass with the title to every Townhome Lot. Except as limited by this Supplemental Declaration, any Owner may delegate his or her rights of use and enjoyment of the Townhome Common Area to the members of his or her family, tenants, contract purchasers who reside on the Property, or guests.

12.2. Walks, Drives, Parking Areas, and Utilities. Declarant hereby reserves unto itself, its successors and assigns, and grants to the Townhome Association (after the expiration of the Declarant Control Period) the right to subject all portions of the Property designated or to be designated as Townhome Common Area to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities and for the maintenance of and general access to all stormwater control structures, gas lines, telephone and electric power lines, television antenna lines, other utilities, ingress, egress and regress and otherwise as it deems to be in the best interests of and necessary and proper for, the Townhome Community or any portion thereof.

12.3. Encroachments and Declarant's Easement to Correct Drainage. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Townhome Association, the Owners, their heirs, successors and assigns, over all Townhome Lots and the Townhome Common Area easements for the encroachment of initial improvements constructed on any Townhome Lots or



Townhome Common Area to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls, upon any of the other portions of the Property. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching improvements in favor of Declarant, the Townhome Association, the Owners and all of their designees. For a period of twenty-five (25) years from the date of conveyance of the first Townhome Lot in a parcel or section, the Declarant reserves for itself and its successors in interest and assigns a blanket easement and right-of-way on, over, and under the ground within that parcel, phase or section to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected Property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected owners. These rights and reservations are assignable by the Declarant.

12.4. Easement for Entry Features. Declarant hereby reserves for the benefit of itself, its successors and assigns in interest and assigns and grants to the Townhome Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Townhome Community, over and upon each Townhome Lot and all Townhome Common Area. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

12.5. Construction and Sale Period Easement. Notwithstanding any provisions contained in this Supplemental Declaration, the Bylaws, the Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Supplemental Declaration terminates and thereafter so long as Declarant owns any property in the Townhome Community for development or sale, Declarant reserves an easement across the Townhome Community for Declarant and any builder approved by Declarant to maintain and carry on development, construction, and sales activities related to property within or near the Townhome Community, upon such portion of the Townhome Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient or incidental to the development, construction and sales activities related to property within or near the Townhome Community. This easement shall include, without limitation: (i) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of the Townhome Community as well as any Townhome Lot in the Townhome Community; (ii) the right to tie into any portion of the Townhome Community with driveways, parking areas and walkways; (iii) the right to tie into or otherwise connect and use (without a tap-on or any other fee for doing so), replace, relocate, maintain and repair any device which provides utility or similar services; (iv) the right (but not the obligation) to construct recreational facilities on the Townhome Common Area; (v) the right to carry on sales and promotional activities in the Townhome Community; (vi) the right to place direction and marketing signs on any portion of the Townhome Community, including any Townhome Lot or Townhome Common Area; and (vii) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities. Further, the Declarant and any builder approved by Declarant may use residences, offices or other buildings owned or leased by Declarant or

such builder as model residences and sales offices, and may also use recreational facilities available for use by the Townhome Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the person causing the damage at its sole expense. This section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Supplemental Declaration.

12.6. Irrigation. Declarant hereby reserves for the benefit of itself, its successors and assigns in interest and assigns and grants to the Townhome Association a non-exclusive, blanket easement over the Property to pump water from ponds, lakes and other bodies of water located within the Townhome Community for irrigation purposes and to maintain, repair and remove irrigation systems to serve landscaping in Townhome Common Areas.

12.7. Fence Easement. Declarant hereby reserves for the benefit of itself, its successors and assigns in interest and assigns and grants to the Townhome Association an easement across any Townhome Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

12.8. Easement to Government Entities. Declarant hereby assigns and grants a perpetual, non-exclusive easement for the benefit of municipal, State or public utilities serving the area, their agents and employees, over all Townhome Common Area hereby or hereafter established for setting, removing and reading utility meters, maintaining and replacing utility connections, and Declarant assigns and grants a perpetual, non-exclusive easement for emergency and public services over the Property for the benefit of other public safety and welfare services or agencies, including, without limitation, garbage collection, mail delivery, police and fire protection.

12.9. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than four (4) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Townhome Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his or her home. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Townhome Lot to as near the same condition as that which existed prior to the commencement of the work as is reasonably practicable.

12.10. Use of Townhome Common Area. Subject to any limitation or restriction set forth in this Supplemental Declaration, Declarant declares that the Townhome Common Area is subject to a perpetual, non-exclusive easement in favor of Declarant, the Townhome Association and their designees, the Owners and all their family members, guests, invitees and tenants, and appropriate governmental and quasi-governmental agencies to use the Townhome Common Area for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Supplemental Declaration and any Annexation or Supplemental Declaration. If ingress or egress to any Townhome Lot or other portion of the Property is through any Townhome Common Area, any conveyance or encumbrance of such area is subject to this easement.

12.11. Right of the Townhome Association and Declarant to Enter Upon the Townhome Common Area. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Townhome Association and all agents, employees or other designees of Declarant or the Townhome Association an easement for ingress, egress and access to enter upon or over the Townhome Common Area for the purposes of inspecting any construction, proposed construction, or improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Townhome Association, as appropriate. Such easement includes an easement in favor of the Townhome Association and Declarant to enter upon the Townhome Common Area now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Townhome Association or Declarant to maintain, repair, or construct improvements which an Owner is required to maintain, construct or repair.

12.12. Right-of-Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Townhome Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Townhome Lot or Tract, their family members, tenants, guests, invitees, successors and assigns, and to each Occupant of a Townhome Lot and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual, non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across any roads, streets, sidewalks, entranceways and cul-de-sacs in the Townhome Community for the purpose of providing access, ingress and egress to and from, through and between the Property.

12.13. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on any Recorded Document. Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Townhome Association, its successors and assigns. Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Townhome Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along a 10-foot strip of land adjacent to the front, side and rear boundary lines of all Townhome Lots within the Property for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easement shall not prohibit the construction of driveways, at locations approved by the ARC, over such easements.

12.14. Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Townhome Lot or other portion of the Property pursuant hereto, including any improvements in such areas, which are not to be maintained by the Townhome Association or a public authority or utility, shall be maintained continuously by each Owner of such Townhome Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such area or other activities

undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Townhome Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Townhome Lot.

12.15. Reserved for the Townhome Association and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Townhome Association at all times over and upon any Townhome Lot or other portion of the Property for the exercise of the easement rights described in this Article XII and for the carrying out by Declarant or the Townhome Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Townhome Association upon any Townhome Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Townhome Association or their employees or agents shall be repaired by Declarant or the Townhome Association, as the case may be, at the expense of Declarant or the Townhome Association, as the case may be.

12.16. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Townhome Common Area, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Supplemental Declaration or as may otherwise be desirable for the development of the Townhome Community, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Townhome Common Areas as may be desirable to Declarant for the development of the Townhome Community and the preservation and enhancement of Declarant's interest therein.

### **Article XIII. Dispute Resolution and Limitation on Litigation.**

Each Owner, by acceptance of a deed for a Townhome Lot, agrees that any dispute arising out of the use, occupancy or ownership of a Townhome Lot or the Townhome Common Area or the interpretation or enforcement of this Supplemental Declaration, the Rules and Regulations, or the By-Laws or any provision hereof or thereof shall be settled by binding arbitration pursuant to the South Carolina Uniform Arbitration Act (S.C. Code Ann. §§ 15-48-10 et seq.), as amended. The Declarant and the Townhome Association shall have the right to pursue such remedies as are available to it at law or in equity and shall not be bound by this mandatory binding arbitration provision.

### **Article XIV. Mortgage Provisions.**

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

#### **14.1. Notices of Action.**

An institutional holder, insurer, or guarantor of a First Mortgage which provides a written request to the Townhome Association, such request to state the name and address of such holder, insurer, or guarantor and the street address of the Townhome Lot to which its Mortgage relates, thereby becoming an ("Eligible Holder"), shall be entitled to timely written notice of:

a. any condemnation loss or any casualty loss which affects a material portion of the Townhome Community or which affects any Townhome Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

b. any delinquency in the payment of assessments or charges owed by a Townhome Lot subject to the Mortgage or such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Townhome Lot or the Owner or Occupant which is not cured within sixty (60) days of receiving notice of such violation;

c. any lapse, cancellation or material modification of any insurance policy the Townhome Association maintains; or

d. any proposed action which would require the consent of a specified percentage of Eligible Holders.

#### 14.2. No Priority.

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

#### 14.3. Notice to Townhome Association.

Upon request, each Owner shall be obligated to furnish to the Townhome Association the name and address of the holder of any Mortgage encumbering such Owner's Townhome Lot.

#### 14.4. Failure of Mortgagee To Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Townhome Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Townhome Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### 14.5. Construction of Article XIV.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Supplemental Declaration or the Bylaws for any of the acts set out in this Article.

### **Article XV. Changes in Townhome Common Area**

15.1. Condemnation.

If a Townhome Lot or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Townhome Common Area shall be appropriately allocated among all other Owners. If any part of the Townhome Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least Sixty-seven (67%) percent of the total votes in the Townhome Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Townhome Association to be disbursed as follows:

a. If the taking or conveyance involves a portion of the Townhome Common Area on which improvements have been constructed, the Townhome Association shall restore or replace such improvements on the remaining Townhome Common Area to the extent available, unless within sixty (60) days after such taking Declarant, during the Declarant Control Period, and Members representing at least eighty (80%) percent of the total votes in the Townhome Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Article VIII regarding funds for restoring improvements shall apply.

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

15.2. Transfer, Partition, or Encumbrance of Townhome Common Area.

a. Except as this Supplemental Declaration otherwise specifically provides, the Townhome Common Area shall not be judicially partitioned or subdivided into Townhome Lots, nor shall the ownership of the Townhome Common Area be otherwise divided or encumbered in any manner after conveyance to the Townhome Association, except upon the approval of Members representing at least Eighty (80%) percent of the total votes in the Townhome Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant if during the Declarant Control Period.

b. The Townhome Association shall have the authority, subject to approval of Members representing a majority of the total votes in the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant, if during the Declarant Control Period, to transfer portions of the Townhome Common Area and improvements thereon to appropriate governmental entities or tax-exempt organizations for the maintenance, operation, and preservation thereof; provided, any such transfer shall not relieve such Townhome Common Area from the rights and benefits of the Townhome Association and the Members as provided in this Supplemental Declaration and shall otherwise be subject to the provisions of this Supplemental Declaration.

**Article XVI Fines and Suspension of Privileges or Services.**

Notwithstanding any other provision herein, the Board may impose fines on an Owner and/or suspend an Owner's right and privilege to use certain Townhome Common Area for failure of that Owner, his lessees, agents or invitees, to abide by this Supplemental Declaration, the Rules and Regulations or the

administrative rules and regulations governing Townhome Common Area. The procedure for the Board to do so shall be as set forth in the Bylaws. The Board shall not impose any such fine or suspension unless and until the Owner charged has been given notice of the charge, opportunity to be heard by and present evidence to the Board and notice of the Board's decision. Suspensions may be imposed for a reasonable period of time and/or until a violation or delinquency is cured.

## **Article XVII. Miscellaneous**

17.1 Parties Bound. All persons and entities acquiring any interest in any of the Townhome Lots, including but not limited to lessees, shall be bound by the provisions of this Supplemental Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the Townhome Lots, shall likewise be bound.

17.2 Duration. The provisions of this Supplemental Declaration shall run with and bind the Property perpetually, unless and until the Townhome Community is terminated.

17.3 Amendment. Except as provided in Section 11.11 and Section 12.2 above, this Supplemental Declaration may be amended only by a written instrument executed by the Townhome Association and authorized by the affirmative vote of at least sixty-seven percent (67%) of all Townhome Lots, cast in person or by proxy at a meeting held in accordance with the Bylaws of the Townhome Association. Any amendment must be recorded to be effective.

17.4 Enforcement. Subject to the provisions of Article XIII above, the Declarant, any Owner and/or the Townhome Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and obligations imposed by this Supplemental Declaration. Subject to the provisions of Article XIII above, the Declarant, the Townhome Association or any Townhome Lot owner may bring any action necessary to enjoin any violation or breach of the provisions of this Supplemental Declaration. The Declarant, the Townhome Association and/or any Owner shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating Owner(s).

17.5 Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Supplemental Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

17.6 Assignment by Declarant. Any or all of the rights, powers, easements, functions and obligations reserved or given to the Declarant in this Supplemental Declaration may be assigned to the Townhome Association, and the Townhome Association shall accept and assume responsibility for any or all such rights, powers, easements, functions and obligations when requested by the Declarant. Any such assignments or transfer shall be made by a Recorded Document, executed by both the Declarant and the Townhome Association, and the Townhome Association shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Declarant. The Declarant, but not the Townhome Association, shall thereupon be released from such obligations and duties.

17.7 Notice of Sale, Lease or Acquisition. In the event an Owner sells or leases such Owner's Townhome Lot, the Owner shall give to the Townhome Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Townhome Lot and such other information as the Townhome Association may reasonably require. Upon acquisition of a Townhome Lot, each new

Owner shall give the Townhome Association, in writing, the name and mailing address of the Owner and such other information as the board may reasonably require.

17.8 Variances. Notwithstanding anything to the contrary contained herein, the Declarant and/or the Townhome Association or its designee shall be authorized to grant individual variances from any of the provisions of this Supplemental Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if the Declarant or the Townhome Association determine that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Townhome Community.

17.9 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Supplemental Declaration, which shall remain in full force and effect.

17.10 Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Supplemental Declaration.

17.11 Law Controlling. This Supplemental Declaration shall be construed and governed pursuant to the laws of South Carolina.

17.12 References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.

17.13 Conflicts. In the event of any conflict between the Master Declaration and this Supplemental Declaration or other Governing Documents, the terms of the Master Declaration shall control.

**[The Remainder of this Page Intentionally Left Blank.]**



IN WITNESS WHEREOF, D.R. Horton, Inc., as the Declarant hereunder, has caused this instrument to be executed by its duly authorized Division President, all by order and authority duly granted by its corporate board of directors, as of the day and year first above written.

**D.R. HORTON, INC.,**  
a Delaware corporation, Declarant

Witness #1

By:

Bradford C. Brundage, Division President

Witness #2

STATE OF

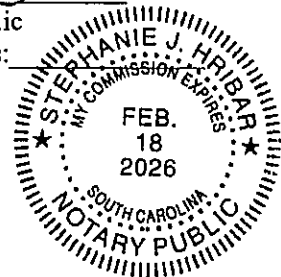
COUNTY OF

I, Stephanie H. Hribar, a Notary Public of the County and State aforesaid, certify that Bradford C. Brundage personally appeared before me this day and acknowledged that he is Division President of D.R. Horton, Inc., a Delaware corporation, and that he, being duly authorized to do so, executed the foregoing for and on behalf of said corporation.

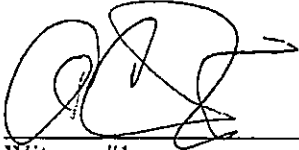
Witness my hand and official stamp or seal, this 14 day of March, 2019

NOTARY SEAL

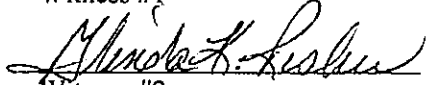
Signature of Notary Public  
My Commission Expires:



IN WITNESS WHEREOF, Coastal Resort Holdings, LLC, as the Declarant under the Master Declaration, has caused this instrument to be executed, all by order and authority duly granted, as of the day and year first above written.



Witness #1



Witness #2

**Coastal Resort Holdings, LLC,**  
a North Carolina limited liability company

By:

Name: Samuel W. Puglia

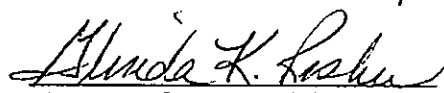
Its: Member/Manager

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

I, Glinda K. Risher, a Notary Public of the County and State aforesaid, certify that Samuel W. Puglia personally appeared before me this day and acknowledged that s/he is Member/Manager, of Coastal Resort Holdings, LLC, a North Carolina limited liability company, and that s/he, being duly authorized to do so, executed the foregoing for and on behalf of said limited liability company.

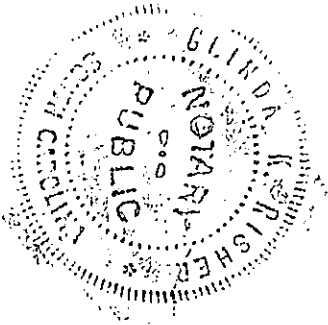
Witness my hand and official stamp or seal, this 28th day of February, 2019.

NOTARY SEAL



Signature of Notary Public

My Commission Expires: 4/21/2025



**EXHIBIT A**

**Land Initially Submitted**

BEING all of Lot 105 as depicted in Plat Book 201 Page 65, Horry County Register of Deeds.

AND

BEING all of Lot 106A, as depicted in Plat Book 276 Page 112, Horry County Register of Deeds.

**EXHIBIT B**

**Land Subject to Annexation in Future**

Any land within one mile of the Property described in **Exhibit A** of this Declaration.

## EXHIBIT C

### Initial Rules and Regulations

The following restrictions shall apply to all of the Townhome Community until such time as they are amended, modified, repealed, or limited pursuant to Article IV of this Supplemental Declaration:

1. General. The Townhome Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for Declarant to assist in the sale of any property or portion thereof as described in **Exhibit A or B**, offices for any property manager retained by the Townhome Association, and business offices for Declarant or the Townhome Association) consistent with the Supplemental Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within the Townhome Community unless expressly authorized by, and then subject to such conditions as the Board may impose:

(a) Parking any vehicles on streets or thoroughfares within the Community or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages; however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Townhome Lot or Townhome Common Area. In addition to the foregoing, (a) vehicles with a chassis capacity greater than one (1) ton such as, but not limited to, flatbed trucks, tow trucks, and tractor trailer rigs; (b) vehicles which carry equipment, tools or materials related to a business which are visible from outside the vehicle such as, but not limited to, ladders, pool supplies, plumbing equipment, construction or landscaping materials; (c) vehicles which are over eighteen (18) feet in length from bumper to bumper; and (d) work trailers, are prohibited from Townhome Lots, driveways, streets, thoroughfares and Townhome Common Area. Notwithstanding the foregoing, this Section 2(a) shall not prevent Declarant and/or contractors, subcontractors and builders approved by Declarant from utilizing such vehicles for its construction activities;

(b) Raising, breeding or keeping animals, livestock or poultry of any kind, except that a reasonable number of dogs, cats (the combined number of dogs and cats not to exceed three) or other usual and common household pets may be permitted on a Townhome Lot. Any animal which, makes objectionable noise or, in the Board's judgment, constitutes a nuisance or inconvenience to the Occupants of other Townhome Lots, shall be removed by the owner upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Rottweilers, pit bulls, chows and other aggressive breeds of dogs shall not be allowed within the Townhome Community. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Owners shall clean up behind any Pet while walking such Pet on any Townhome Common Area. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Townhome Lot or creates noise or other conditions, which tend to disturb the peace or threaten the safety of the Occupants of other Townhome Lots;

(d) Any activity that violates local, state, or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities, which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Townhome Lot;

(f) Any noxious or offensive activity (including, without limitation, barking dogs) which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Townhome Common Area or to the Occupants of other Townhome Lots;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Townhome Lot;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to Occupants of other Townhome Lots, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Dumping grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Townhome Community, except that fertilizers may be applied to landscaping on Townhome Lots provided care is taken to minimize runoff, and Declarant and builders approved by Declarant may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers. Such containers shall be either screened from view or kept inside, except as reasonably necessary for garbage pick ups;

(l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Townhome Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Townhome Lot without the Owner's consent;

(m) Subdivision of a Townhome Lot into two or more Townhome Lots, or changing the boundary lines of any Townhome Lot after a subdivision plat including such Townhome Lot has been approved and recorded, except that Declarant shall be permitted to subdivide or replat Townhome Lots it owns;

(n) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within the Townhome Community, except that fishing from the shore shall be permitted with appropriate licenses. The Townhome Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams, or other bodies of water within or adjacent to the Townhome Community;

(o) Use of any Townhome Lot for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Townhome Lot rotates among participants in the program

on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that: (i) a reasonable amount of fuel may be stored on each Townhome Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, (ii) a buried, underground tank for natural gas may be stored on a Townhome Lot if approved in advance by the ARC, and (iii) the Townhome Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(r) Any business, trade, or similar activity, except that an Owner or Occupant residing in a Townhome Lot may conduct business activities within the Townhome Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Townhome Lot; (ii) the business activity conforms to all zoning requirements for the Townhome Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Townhome Community; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Townhome Community which is noticeably greater than that which is typical of Townhome Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Townhome Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents within the Townhome Community, as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Townhome Lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Townhome Community or its use of any Townhome Lots which it owns within the Townhome Community;

(s) Capturing, trapping, or killing of wildlife within the Townhome Community, except in circumstances posing an imminent threat to the safety of persons using the Townhome Community;

(t) Feeding wildlife within the Townhome Community, provided, however, that feeding birds by small bird houses located within tree(s) on a Townhome Lot shall be permitted;

(u) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Townhome Community;

(v) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Townhome Lot without prior approval pursuant to Article V;

(w) Operation of motorized vehicles on pathways or trails maintained by the Townhome Association;

(x) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Townhome Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article V of this Supplemental Declaration. This shall include, without limitation, landscaped or grassed areas; signs; basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; docks, piers, and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind. Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Townhome Lot with mulch or stone; and

(y) Use of exterior decorative lights, including holiday displays, with a light bulb color other than white; furthermore, if a holiday display creates a significantly increased traffic flow within the Townhome Community, the Townhome Lot's Owner or Occupant responsible for such display shall remove it upon request of the Board and if the Owner or Occupant does not remove such display within a reasonable time, the Board may remove the display;

3. Prohibited Conditions. The following shall be prohibited within the Townhome Community:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Townhome Community;

(b) Structures, equipment, or other items on the exterior portions of a Townhome Lot which have become rusty, dilapidated, or otherwise fallen into disrepair;

(c) Installation of any sprinkler or irrigation systems or wells of any type, other than those initially installed by Declarant or a Declarant approved builder, which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Townhome Community, except that Declarant and the Townhome Association shall have the right to draw water from such sources;

(d) Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that Declarant and the Townhome Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Townhome Community; and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted; however, any such Permitted Device must be placed in the least conspicuous location on the Townhome Lot (generally being the rear yard) at which an acceptable quality signal can be received and is not visible from the street, Townhome Common Area, or neighboring property or is screened from the view of adjacent Townhome Lots in a manner consistent with the Townhome Community-Wide Standard and the Architectural Guidelines; and

(e) Installation of exterior decorative items, including but not limited to statuary, fountains or wishing balls, but not including flags, political signs, banners, symbols and/or permitted exterior decorative



lights, except that the Townhome Association may adopt reasonable time, number, size, place and manner restrictions regulating displays which are visible from outside the Townhome Lot.

4. Leasing of Townhome Lots. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Townhome Lot by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term; however, in no case shall such term be shorter than six (6) months. No Owner shall lease any Townhome Lot without first contracting a professional, licensed property management company to manage the Townhome Lot and the lease, and without first providing the Townhome Association with a copy of that contract. No owner shall lease any Townhome Lot without first providing all lessees with copies of the Governing Documents. Each lease shall require all lessees to acknowledge receipt of copies of all of the Governing Documents and to comply with and adhere to all of the Governing Documents. A true copy of each executed lease, together with such additional information as may be required by the Board, shall be given to the Board by the Townhome Lot Owner within ten (10) days of execution of the lease.