

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

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53 2010 00019303

Instrument Number: 2010- 00019303

As

Recorded On: September 27, 2010

Restrictive Covenants

Parties: MALPHRUS LAND LLC

To

SOPHIA LANDING AT MONTAGUE PLANTATION

Billable Pages: 41

Recorded By: CLAYPOOLE, J. STANLEY

Num Of Pages: 46

Comment:

**** Examined and Charged as Follows: ****

Restrictive Covenants	51.00
Recording Charge:	51.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:

Record and Return To:

Document Number: 2010- 00019303	CLAYPOOLE, J. STANLEY
Receipt Number: 295027	2155 NORTHPARK LANE
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Cynthia B. Forte

Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
)
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**DECLARATION OF COVENANTS, CONDITIONS AND
 RESTRICTIONS FOR SOPHIA LANDING at MONTAGUE
 PLANTATION**

WITNESSETH

WHEREAS, on or about September 1, 2009, Malphrus Land LLC took title to Tract 1 (90.905 acres) and Tract 2 (21.24 acres) as shown on that certain plat prepared by Horner, Eelman & Gearhart, LLC dated March 1, 2006 entitled: "PLAT OF A BOUNDARY SURVEY SHOWING THE COMBINATION AND SUBSEQUENT DIVISION OF PARCELS A & B TRACTS 1, 2, 5, 6, 7,8 & 9 TO FORM TRACT 1 (TMS 235-10-02-020) AND TRACT 2 (TMS 235-06-05-062) WITH TRACT 1 (TMS 235-10-02-020) BEING CONVEYED TO DONNIE B. & DAVANT S. MALPHRUS LOCATED IN THE CITY OF GOOSE CREEK BERKELEY COUNTY, SC" and recorded April 13, 2006 in the Office of the ROD for Berkeley County in Plat Cabinet R at Page 12-B; and

WHEREAS, Malphrus Land, LLC has developed a portion of the said Tract 1 and Tract 2 into 106 lots known generally as Lots 1 through 98 and Lots 102 through 109 Sophia Landing at Montague Plantation as shown on that certain preliminary plat prepared by HEG Engineering Consultants dated April 30, 2010 entitled: "PLAT TO FORM 106 LOTS TO INCLUDE LOT 1 THROUGH LOT 98 & LOT 102 THROUGH Lot 109 SOPHIA LANDING AT MONTAGUE PLANTATION SURVEYED FOR MALPHRUS LAND, LLC LOCATED IN THE CITY OF GOOSE CREEK BERKELEY COUNTY, SC" and recorded JULY 22, 2010 in the Office of the ROD for Berkeley County in Plat Cabinet O at Page 49-50P; and known generally as Sophia Landing at Montague Plantation and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("Property");

WHEREAS, Declarant desires to subject the Property to the provisions of this Declaration in order to provide a flexible and reasonable method for the administration, assessment and maintenance of the Common Areas, as defined herein, within Sophia Landing at Montague Plantation;

NOW THEREFORE, this DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS and EASEMENTS is made this 21st day of September, 2010 by Malphrus Land, LLC (hereinafter "Owner"). In this Declaration the Owner shall be also referred to as "Declarant". This Declaration and the covenants, conditions, restrictions and easements set forth herein shall be covenants to run with the land and all the Property is subject and subordinate to the provisions of this Declaration. The Declaration shall inure to the benefit of and shall be binding upon each Owner and his, her or its respective heirs, legal representatives, successors, lessees, grantees, assigns and mortgagees.

**ARTICLE I
DEFINITIONS**

The following words and terms, when used in this Declaration or any supplemental declaration, unless the context shall clearly indicate otherwise, shall have the meanings set forth below. Other definitions may appear throughout this instrument and the Bylaws attached hereto, and shall have the meanings more particularly set forth therein.

Section 1.1. Additional Property shall mean real property, whether or not owned by Declarant, which is made subject hereto as provided in Article II hereof.

Section 1.2. Affiliate shall mean any entity which is owned by the Declarant, which owns the Declarant, or

in which the Declarant or Persons holding an interest in Declarant owns at least fifty (50%) percent of the interests.

Section 1.3. Assessment shall mean the charges from time to time assessed against a lot by the Association in the manner herein provided.

Section 1.4. Association shall mean the Sophia Landing at Montague Plantation Property Owners Association Inc. a South Carolina non-profit corporation, its successors and assigns.

Section 1.5. Board of Directors or Board shall mean the Board of Directors of the Association.

Section 1.6. Builder shall mean and refer to Dan Ryan Builders South Carolina, LLC, Eastwood Homes Corp., or any future licensed contractor or residential homebuilder who purchased a Lot for purposes of building a single family dwelling or townhouse for resale to a third party

Section 1.7. Bylaws shall mean the Bylaws of the Association which shall govern the administration and operation of the Association, as may be amended from time to time, a copy of which is attached hereto as Exhibit "B".

Section 1.8. Common Area(s) shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners or designated by the Declarant as Common Areas, including, but not limited to all roads and streets, Ponds and areas designated as HOA areas. Such areas are not dedicated for use by the general public, and the general public shall have no easement of use and enjoyment therein.

Section 1.9. Common Expenses shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the terms, provisions and intent of this Declaration.

Section 1.10. Declaration shall mean this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SOPHIA LANDING at MONTAGUE PLANTATION and all supplements and amendments thereto recorded in the ROD Office for Berkeley County, South Carolina.

Section 1.11. Declarant shall mean and refer to Malphrus Land, LLC, and any entity designated as a successor declarant by Malphrus Land, LLC, by a recorded supplemental declaration provided, however, that this definition shall not include the purchaser, owner, or mortgagee of any Lot.

Section 1.12. Development Period shall mean and refer to the period of time during which the Declarant owns any property which is subject to this Declaration or any Additional Property or has the unilateral right to subject Additional Property to this Declaration. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

Section 1.13. Director shall mean and refer to members, or any one member, of the Board of Directors of the Association.

Section 1.14. Improvement shall include any building, fence, wall, patio area, driveway, walkway, antenna, sign, mailbox, pool, or other structure or improvement, including trees, plants, shrubs, flowers and other landscaping, which is constructed, made, installed, placed or developed within or upon, or removed from, any portion of the Property, or any change, alteration, addition or removal of any structure

or improvement other than normal maintenance and repair.

Section 1.15. Lot shall mean and refer to any lot, whether improved or unimproved, which may be independently owned and conveyed, and which is shown on a recorded plat of the Property and designated for use as a building area site; such term shall also include, without limitation, any contiguous or non-contiguous portion of a Lot ancillary to the use allowable on the remainder of the Lot together with any and all Improvements located therein or thereon. "Lot" includes, by way of illustration and not limitation, patio homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such. "Lot" excludes Common Areas and Property dedicated to the public unless otherwise specified in the deed from the Declarant or the Association conveying such property or in another recorded document expressly approved by the Declarant. Each Lot for which a certificate of occupancy has been issued shall constitute a separate Lot. The Association shall have the right to determine whether a Lot exists and how many Lots exist at a particular time, subject to the Declaration.

Section 1.16. Managing Agent shall mean any entity or individual retained by the Association to manage the Common Area, or portions thereof, and supervise its maintenance and the operation of the administrative affairs of the Association.

Section 1.17. Member shall mean every record owner (as hereinbelow defined), whether one or more persons or entities, of any Lot which is part of the Property

Section 1.18. Occupant shall mean any individual lawfully occupying a unit within a Lot including, without limitation, any Owner, or family member, guest, invitee, licensee, or tenant.

Section 1.19. Owner shall mean and refer to one or more persons or entities, including Builder or Declarant, who or which own(s) fee simple title to any Lot, including contract sellers but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.

Section 1.20. Person shall mean any individual or legal entity, as the context may reasonably require.

Section 1.21. Property shall mean all the land and Improvements thereon described in the attached Exhibit "A" and any Additional Property.

Section 1.22. Public Records shall mean the Register of Deeds in Berkeley County, South Carolina.

Section 1.23. Subdivision shall mean that portion of Montague Plantation that is being developed by Declarant known as Sophia Landing at Montague Plantation.

Section 1.24. Wetland shall mean any piece or tract of the Property designated on a recorded plat as a "Wetland" and which is subject to a Department of the Army Permit issued by the U.S. Army Corps of Engineers, or is the object of a mitigation plan under any such permit, and which, by Supplement Declaration referencing such plat and permit (and such additional matters as the permit requires) is made subject to the covenants set forth in Article III below.

Section 1.25. Working Capital Fund shall mean and refer to an Owner's share of the annual assessments collected from the purchaser of each Lot and transferred to the Association at the time of the closing of the initial sale of each Lot and at the time of the closing of each and every subsequent sale of each Lot to a third party, in the manner herein provided.

**ARTICLE II
PROPERTY**

Section 2.1 (a) Existing Property. The real property which is and shall be owned, held, transferred, sold, conveyed and occupied, subject to this Declaration is located in Goose Creek, South Carolina and is more particularly described on Exhibit "A" attached hereto.

The property heretofore described shall hereinafter be referred to as the existing property.

(b) Only the real estate described in subparagraph (a) of this Section is hereby made subject to this Declaration. No other real estate, including specifically, but not by way of limitation, the following real estate, is made subject to this Declaration:

- (1) any and all property shown on the plat heretofore referred to as being within the right of way of streets or roads;
- (2) those tracts or parcels of land which may be shown on the plat as proposed recreation area or for utility purposes.

**ARTICLE III
PLAN OF THE DEVELOPMENT**

Section 3.1. General Plan of Development. The Subdivision initially shall consist of the Property described in Exhibit "A" attached hereto. The Property may also include certain Improvements to the Common Areas, including roads and streets, ponds, HOA areas, utility systems, drainage systems and other Improvements serving the Lots, and various recreational amenities. The Property within the Subdivision shall be subject to the covenants, easements and restrictions set forth in this Declaration.

Declarant shall have the right, but not the obligation, for so long as Declarant: (i) owns any Lot primarily for the purpose of sale of the Lot; or (ii) has the option to add any Additional Property or any portion thereof to the Subdivision, to make improvements to all Common Areas including, but not necessarily limited to, the following: (i) installation and maintenance of any Improvements in and to the Common Areas, including the recreational amenities; (ii) installation and maintenance of any water, sewer and other utility systems and facilities .

Section 3.2 Plan of Development of Additional Property. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit and subject at any time, or from time to time, any Additional Property to the provisions of this Declaration and thereby cause the Additional Property or any portion or portions thereof to become part of the Property subject to this Declaration. This option may be exercised by Declarant in accordance with the following rights, conditions and limitations which are the only conditions and limitations on such option to add any portion of the Additional Property to the Subdivision.

DECLARANT SHALL NOT BE OBLIGATED TO IMPOSE ON THE ADDITIONAL PROPERTY OR ANY PORTION OF IT THE COVENANTS, CONDITIONS OR RESTRICTIONS CONTAINED HEREIN OR ANY COVENANTS, CONDITIONS AND RESTRICTIONS SIMILAR TO THOSE CONTAINED HEREIN, AND THE PROPERTY NOT SUBMITTED TO THIS DECLARATION WILL BE FREE OF ANY COVENANTS OR CONDITIONS WHATSOEVER UNLESS OTHERWISE AFFIRMATIVELY IMPOSED BY DECLARANT.

The option to subject Additional Property to this Declaration may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the Office of the Register of Mesne Conveyances for Berkeley County, South Carolina. Any such amendment shall expressly submit or subject the Additional Property or such portion of it as the Declarant desires to all provisions of this Declaration, and upon the exercise, if any, of such option or options the provisions of this Declaration shall then be construed as embracing the property described in Exhibit "A" and the Additional Property or such portion or portions thereof so submitted to the terms hereof.

Improvements to be constructed on the Additional Property which may be subjected to the restrictions hereunder shall be of comparable style, quality, size and cost to those Improvements which have been constructed on the Property which is already subject to this Declaration.

Section 3.3 Interest Subject to Plan of Development. Every Owner shall take title, and every mortgagee or holder of a security interest in any part of the Property shall hold such mortgage or security interest, subject to the terms and conditions of this Declaration.

ARTICLE IV RESTRICTIVE COVENANTS AND NOTICE FOR WETLANDS

Section 4.1. Restrictive Covenants. Portions of the Property are designated as "Wetlands" and "Wetland Buffers" pursuant to the USACE Permit No. SAC-2005-0395. All deeds to property conveyed by Declarant to an Owner which contains "Wetlands" or "Wetland Buffers" shall contain or be accompanied by a notice that such portions of the Property are subject to such Corps of Engineers Permit and a Declaration of Protective Covenants which was recorded in the Register of Deeds for Berkeley County in Book 8315 at Page 279 ("Restrictive Covenants").

ARTICLE V PROPERTY RIGHTS

Section 5.1 Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by fifty-one (51%) percent of each class of members has been recorded.

Section 5.2. Delegation of use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 5.3. Streets. All streets fronting the lots in the subdivision are dedicated public right-of-ways and shall be maintained by Berkeley County. The streets shall be subject to an ingress and egress easement in favor of the owners of the remaining properties shown on the subdivision plat referenced herein. In exchange for the said ingress and egress easement, the owners, of the remaining properties or an association created thereby shall maintain all drainage facilities which service the lots described herein.

ARTICLE VI PROPERTY RIGHTS IN THE COMMON AREAS

Section 6.1. Easements for Declarant. During the period that Declarant owns any of the Property, or until such earlier time as Declarant records a Supplemental Declaration relinquishing all or part of its rights as set forth in this section, Declarant shall have an alienable and transferable right and easement upon, over, above, through, under, and across the Common Area for the purpose of constructing, installing, maintaining, repairing and replacing such other Improvements to the Property as Declarant desires. The exercise of such right and easement by Persons other than Declarant shall be undertaken only with the prior written consent of the Declarant during the Development Period.

Section 6.2. Easements for Association. The Association and its directors, officers, agents and employees, including, but not limited to, any Managing Agent of the Association and any officer, agent and employee of such Managing Agent shall have a general right and easement to enter upon any Common Area, in the performance of their respective duties.

Section 6.3. Changes in Boundaries; Additions to Common Areas. During the Development Period, Declarant reserves the right and power, without the approval of the Association, to change the boundary lines between any Common Area and other Property owned by Declarant or any Affiliate, or to add portions of the Property to the Common Area.

Section 6.4. Easements for Utilities and Services. Declarant shall have a transferable and perpetual power and authority to grant and accept easements to and from any private entity or public authority, agency, public service district, public or private utility, or other Person, upon, over, above, through, under and across the Common Areas for constructing, installing, maintaining, repairing, inspecting, and replacing master television antennae or television cable systems, data transmission systems, security and similar systems, landscaping, and all utility facilities and services, including, but not limited to, storm and sanitary sewer systems and electrical, gas, telephone water and sewer lines. Such easements may be granted or accepted by Declarant without notice to or consent by the Association. The Association may grant such easements in the manner set forth in the Bylaws, but may not grant such easements over Property owned by the Declarant or its Affiliates without the express written permission of the owner. To the extent feasible, as determined by the Declarant or the Association, as applicable, all utility lines serving the Property and located therein shall be located underground. Unless permitted by the terms of the easement, or unless permitted by the grantee of the easement or the commission, municipality, utility or other entity controlling the easement area, no structure shall be erected, no paving shall be laid, and no trees or shrubs shall be planted in such easement, without the written consent of the grantee of such easement.

Section 6.5. Municipal Easement. Police, fire, water, health, and other authorized municipal officials, employees and vehicles shall have the right of unrestricted ingress and egress to the Common Areas for the performance of their official duties.

Section 6.6. Environmental Easement. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns a transferable and perpetual right and easement on, over and across all unimproved portions of the Common Areas for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

Section 6.7. No Partition. There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provision of this Declaration.

ARTICLE VII THE ASSOCIATION

Section 7.1. Powers and Duties. The Declarant has established the Association for the purpose of exercising powers of (i) owning, maintaining and administering the Common Areas; (ii) administering and enforcing covenants, conditions and restrictions contained herein; and (iii) levying, collecting and disbursing Assessments and charges herein created. Further, upon completion of construction of the Common Areas and the improvements thereon, the Declarant reserves the right to convey to the Association and the Association agrees to accept any or all of its rights and obligations set forth herein. The Association shall be authorized to provide the following services:

- (a) clean-up, maintenance, and landscaping of all Common Areas and wetlands, to the extent allowed by law, owned by Association;
- (b) to construct and manage improvements and all recreational facilities on Common Areas;
- (c) to provide administrative services including, but not limited to, legal, accounting, financial, and communication services, notice of meetings, referendums, etc., incident to the above listed services;
- (d) to provide administrative services including, but not limited to, accounting and financial services, in the administration of any agreement for cable television and related to, or incident to, the above listed services;
- (e) to provide liability and hazard insurance covering improvements and activities on the Common Areas, independently or in collaboration with the Declarant;
- (f) to provide directors and officers liability insurance for the Association and its duly elected Directors and Officers;
- (g) to take any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Subdivision;
- (h) to provide any and all services necessary or desirable (in the judgment of the Board of Directors of the Association) to carry out the Association's obligation and business under the terms of this Declaration.

Section 7.2. Membership and Voting. The members of the Association shall be the Owners, and, during the Development Period, the Declarant.

Section 7.3 Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 7.4 The Association shall have two classes of voting membership:

CLASS A. Class A member(s) shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the Owners determine, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B. The Class B member(s) shall be the Declarant and shall be entitled to eight (8) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership, or
- (b) on December 31, 2028.

Section 7.5. Board of Directors. The Board of Directors shall function in accordance with this Declaration and the Bylaws, and all Owners shall be bound by this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SOPHIA LANDING at MONTAGUE PLANTATION and the Bylaws. The Bylaws may be amended, from time to time, as provided therein. The Board of Directors shall constitute the final authority of the Association, and all decisions of the Board of Directors shall be binding upon the Association, and the Owners. Unless otherwise expressly stated by this Declaration or the Bylaws, all rights, titles, privileges and obligations vested in or imposed upon the Association shall be held and performed by the Board of Directors.

(a) **Number.** During the Development Period, the Board of Directors shall consist of five (5) individuals, and the Declarant. During the Development Period such individuals shall be appointed by Declarant. Said individuals need not be Owners of Lots.

(b) **Rules and Regulations.** The Board of Directors shall have the authority from time to time to adopt rules and regulations governing the use, administration and operation of the Common Areas, subject to the terms of this Declaration and the Bylaws. The Board of Directors shall have the authority to lease or grant licenses or concessions with respect to portions of the Common Areas, provided that such grants or leases shall be consistent with the provisions of this Declaration and Bylaws.

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

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

the officers of the Association, all on behalf of the Association, shall be deemed agent for the Association and binding upon the Association.

(d) **Binding Authority.** If a disagreement arises between Owners, or among or between the Association, and Owners, or during the Development Period, the Declarant, all related to the Common Areas or the interpretation and application of this Declaration or the Bylaws of the Association, or the Declarations or the Bylaws of the Subordinate Associations, the decision of the Board of Directors regarding the proper disposition of such matter shall be final and binding upon the entities involved, including the Association.

(e) **Management.** The Board of Directors may, in its discretion, retain a Managing Agent or one or more employees of the Association to manage the Common Areas and supervise its maintenance and operation and the operation of the administrative affairs of the Association. The terms of any management or employment agreements shall be determined by the Board of Directors, provided that any management or employment contracts shall (i) permit the termination thereof for cause by the Association upon not more than sixty (60) days prior written notice; and (ii) be for a period of not more than five (5) years. Such contracts may permit renewals thereof for periods not to exceed five (5) years at a time provided that such renewal is approved by the parties. Nothing herein shall prohibit the Association from entering into a management contract with the Declarant or any Affiliate of the Declarant if the terms of such contract are reasonable and consistent with the above provisions. Declarant has designated Dorchester Real Estate Services, Inc. as Managing Agent

Section 7.6. Insurance. If such insurance is available at reasonable cost, the Board of Directors shall endeavor to obtain insurance coverage, in such amounts as it shall reasonably determine, for the Common Areas other property of the Association and the activities of the Association, to cover the insurable interests of the Association and any mortgagees of the Association, and the insurable interests of the Declarant and Managing Agent, if any, and their respective directors, officers, employees and agents, if any, therein. To the extent feasible at reasonable cost, such insurance coverage shall be obtained:

(a) against loss or damage by fire, flood, earthquake or other casualty covered by standard extended coverage policies. The insurance shall be for the full insurable value thereof (based upon current replacement value);

(b) against such risks as vandalism, theft and malicious mischief;

(c) for comprehensive general public liability and, if applicable, automobile liability insurance, covering loss or damages resulting from accident or occurrences on or about the Common Areas or elsewhere;

(d) for worker compensation or other mandatory insurance;

(e) for fidelity insurance covering any employees or officers of the Association or Managing Agent having access to any substantial funds of the Association;

(f) for officers and directors, providing coverage against claims brought against the Board of Directors or officers of the Association acting in such capacity; and

(g) for such other insurance as the Board of Directors shall determine to be reasonable and desirable from time to time.

All insurance premiums shall be a Common Expense. Such insurance coverage shall be written in the name of the Association, losses under such policies shall be adjusted by, and the proceeds for such insurance shall be payable to, the Association. The insurance coverage shall, if feasible, provide that (i) the interest of the Association shall not be invalidated by any act or neglect of any Owner or any officer or member of the Board of Directors of the Association; (ii) the coverage shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Association; and (iii) subrogation shall be waived with respect to the Association and its Board of Directors, employees and agents, and Owners, members of their household and mortgages.

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

The insurance proceeds for casualty losses after payment of any applicable fees and reimbursable expenses of any trustee, attorney or consultant advising the trustee or the Association regarding insurance matters, shall be applied by the Board of Directors on behalf of the Association for reconstruction or restoration of the damaged property; provided, however, if such proceeds are inadequate to reconstruct or restore the damaged property, the Board of Directors may pursue such other options as it may determine are reasonable under the circumstances.

ARTICLE VII ASSESSMENTS

Section 8.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, excluding the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 8.2. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Sixty Five and no/100ths (\$265.00) Dollars per Lot. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased not more than Ten (10%) percent above the Maximum Annual Assessment for the previous year without a vote of the membership. The Maximum Annual Assessment may be increased above ten (10%) percent by a vote of fifty-one (51%) percent of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

- (a) In the event that Declarant, or Association, should construct a swimming pool upon one or more of the Common Areas, the maximum annual assessment shall be increased by One Hundred and no/100ths (\$100.00) Dollars to One Hundred Twenty Five and no/100ths (\$125.00) Dollars to per Lot
- (b) The Maximum Annual Assessment thereafter may be increased each year not more than Ten (10%) percent above the Maximum Annual Assessment for the previous year without

a vote of the membership. The Maximum Annual Assessment may be increased above Ten (10%) percent by a vote of fifty one (51%) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 8.3. Fiscal Year and Budget. The fiscal year of the Association shall be the calendar year. Unless otherwise determined by the Board of Directors, the Board of Directors shall prepare or cause to be prepared by December 1 an operating budget ("Budget") for the next fiscal year setting forth the estimated Common Expenses and anticipated revenues of the Association for such fiscal year, and any projected deficit or surplus from the preceding fiscal year. The Budget, once approved by the Board of Directors, shall serve as the basis for assessments to all Owners for the Association ("Total Assessments") for such fiscal year and the primary guidelines under which the Association shall be projected to be operated during such fiscal year. If the Board of Directors fails for any reason to adopt a Budget for the fiscal year, then until such time as it is adopted, the Budget and Total Assessments in effect for the current year shall automatically be increased ten (10%) percent effective the first day of the fiscal year. Such adjusted Budget shall be the Budget for the succeeding year, until a new Budget is adopted. Within ninety (90) days following the close of the Association's fiscal year, the Board of Directors shall cause an unaudited financial statement of the Association ("Annual Report") to be prepared by a public accountant licensed to practice in the State of South Carolina. Upon request, a copy of the Annual Report shall be provided to any Owner of a Lot which is subject to Assessments.

Section 8.4 Determining the Budget. The Budget and the Total Assessments shall be based upon annual estimates by the Board of Directors of the Association's revenues and its cash requirements to pay estimated expenses and costs arising out of or connected with the use, maintenance and operation of the Common Areas and the operation of the Association. Such estimated expenses and costs may include, among other things, the following: expenses of management, including compensation of any Management agent; taxes and special assessments; insurance premiums, repairs and maintenance; wages and personnel expenses for Association employees; Berkeley Cooperative street lighting and other utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of one or more reasonable contingency reserves and/or sinking funds for road maintenance; any principal and interest payments due for debts of the Association; and any other expenses, costs and existing or projected liabilities which may be incurred by the Association for the benefit of the Owners pursuant to this Declaration. Such expenses and costs shall constitute a Common Expense.

Section 8.5. Working Capital Fund. The Association may establish a working capital fund of Two Hundred Fifty and No/100 (\$250.00) Dollars for each Lot. If established, each Lot's share of said working capital fund shall be collected from the purchaser and transferred to the Association at the time of the closing of the initial sale of each Lot to a party other than the Declarant or Builder and at the time of the closing of each and every subsequent sale of each Lot to a third party, other than the Declarant or Builder. The working capital fund shall be maintained in the general Association account for the use and benefit of the Association and shall be used as deemed necessary or desirable by the Board of Directors of the Association. All sums paid into the working capital fund are in addition to and not in lieu of regular assessments for common expenses.

Section 8.6 Special Assessments. In addition to the regular budget Assessments authorized above, the Board of Directors may levy one or more Special Assessments which cumulatively do not exceed One Hundred and No/100 (\$100.00) Dollars per Lot during any fiscal year. In addition, the Board of Directors may levy one or more Special Assessments to cover the cost of any unbudgeted property taxes or assessments or, in the event of an insured loss or event, any deductible amount under the insuring policy. Any other Special Assessments levied by the Board of Directors shall have the approval of a majority of

Owners of the Lots. Meetings of Owners for the special purpose of considering a Special Assessment shall be held only after written notice by the Association to the Owners of the Lots, in accordance with the notice procedure set forth in this Declaration. The meeting shall occur no earlier than seven (7) days after the date of mailing or delivery. The notice shall state generally the purpose and amount of the proposed Special Assessment. Owners may be represented at such meetings by written proxy, which proxy may be held by any Person. Special Assessments shall be allocated among Lots in the same manner as other Assessments. Special Assessments shall be payable by the date determined by the Board of Directors, but no earlier than fourteen (14) days after notice of such Assessment shall have been given to the Owner in accordance with the procedure set forth in this Declaration.

Section 8.7. Assessments for Lots Not Existing at Beginning of Fiscal Year. If a Lot is created after the beginning of the fiscal year, then the applicable Assessment for such Lot shall be pro-rated and shall be payable for the balance of the current fiscal year beginning on the first calendar day of the month following the creation of such Lot.

Section 8.8. Assessments for Lots Owned by Declarant and Builder. Lots owned by Declarant shall be exempt from the payment of Assessments for as long as they are owned by Declarant. Lots owned by Builder shall be exempt from the payment of Assessments for as long as they are owned by Builder. At such time as a Lot is conveyed from Declarant or Builder to an Owner other than Declarant or Builder, said Lot will be subject to Assessments under this Declaration just like any other Lot. The first Annual Assessment shall be adjusted according to the number of days remaining in the fiscal year.

At such time as a Lot owned by Declarant or Builder is sold or a dwelling is completed and occupied thereon, said Lot will be subject to Assessments under this Declaration just like any other Lot. The Declarant and Builder may elect, in lieu of paying Assessments, to contribute to the Association from time to time such funds as may be required to offset any operating deficit of the Association which exists after subtracting Common Expenses incurred during the year from Assessments and other revenues received during the year. The Declarant shall be deemed to have elected to continue paying on the same basis as during the preceding fiscal year unless it notifies the Association of any change by March 1 of the applicable fiscal year, or unless otherwise agreed to between the Declarant and the Association.

Section 8.9. Effect of Nonpayment. Any Assessment which is not paid when due by an Owner to the Association, shall be delinquent. The Association may bring an action at law against any Owner personally obligated to pay the same, or foreclose the lien against the Lot (as in the foreclosure of a mortgage), or both. The Association shall have the right to bid at any foreclosure sale, and, upon conveyance to the Association, thereafter hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

The lien provided for herein shall be subordinate to the lien of any first Mortgage and any unpaid taxes. The sale or transfer of any Lot shall not affect the Assessment lien. However the sale or transfer of any Lot pursuant to mortgage foreclosure or any deed or other proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments payment thereafter becoming due or from the lien thereof.

Section 8.10. Attorney's Fees. In any suit or action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the Bylaws, the Declarant or the Association shall be entitled to recover from any other party to the suite or action which is subject to this Declaration its costs and disbursements and reasonable attorneys' fees and expenses in such suit or action and any appeal

thereof.

Section 8.11. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the Assessment, charges and liens created herein:

- (a) Grantees in conveyances made for the purposes of granting utility easements;
- (b) Owners of all Common Areas;
- (c) Unsubdivided land owned by the Declarant;
- (d) Lots used for a sales office or model home so long as said use is in existence.

Section 8.12 Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.13 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8.14 Date of Commencement of Annual Assessments: Due Dates. The first annual assessment provided for herein shall not commence until such time as determined by the Board of Directors of the Association, but in no event not later than the conveyance of the first lot to an owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8.15. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 8.16. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IX

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee (ACC) composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and locations within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE X CONDEMNATION OF THE COMMON AREAS

Section 10.1. Condemnation. Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association. If the portion of the Common Area so taken or conveyed was improved in any way, then the Association shall repair, rebuild, replace or renovate the Improvements so taken, to the extent practicable, on the remaining lands included in the Common Area which are available thereof, in accordance with plans approved by the Board of Directors. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and, in the opinion of the Board of Directors, such deficiency cannot or should not be funded from a reserve fund or regular Assessments, the Board of Directors may levy a special assessment against all Lots in accordance with the procedure set forth in Section 8.6.

ARTICLE XI HOME TELEPHONE COMPANY

Section 11.1. Basic Cable Television Service Owner and Association have entered into a Bulk Cable Television Services Agreement with Home Telecom, LLC wherein Home Telecom, LLC has the non-exclusive right to provide reduced cost programming services and other telephone, wireless, internet, and similar services to the Owners of Lots within the subdivision. The reduced cost of such services shall be included within the annual assessments noted in Article VII above. Under the terms of the Bulk Cable Television Services Agreement with Home Telecom, LLC, the Association shall pay the monthly programming services fee for the basic cable television services to Home Telecom, LLC, or its successor entity registered with the South Carolina Public Service Commission. Under the terms of this Bulk Cable Television Services Agreement, upon payment of the Association annual assessments by each Owner, basic Programming Services will be provided to each Owner for each Lot within the subdivision. The Basic Programming Services and the duties and obligations of the Association and of Home Telecom, LLC. to provide such services are subject to cancellation pursuant to the terms and conditions of the Bulk Cable Television Services Agreement.

Section 11.2. Digging or Excavation Work. Each Lot Owner, lesser and/or his heirs, successors and assigns and the Association shall contact Home Telecom, LLC, or its successor, three (3) days prior to any digging or excavation work on the Property, including swimming pool installations, trenching, or any type of digging. Upon notification by the Lot Owner or the Association, a field survey will be conducted by Home Telecom, LLC personnel to insure that there are no conflicts with Home Telecom, LLC's safety requirements. Any excavation in violation of Home Telecom, LLC's safety requirements is expressly prohibited.

ARTICLE XII RESTRICTIONS AND COVENANTS

The following covenants, restrictions and easements are herewith imposed on the Property;

Section 12.1. Residential Use of Property. All lots shall be used for residential purposes and no business or business activity shall be carried on upon any Lot at any time; provided, however, that nothing herein shall prevent Declarant or any builder of homes subject to this Declaration from using any Lot owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of said property, including but not limited to sales offices, parking areas and model home. **Section 12.2. Architectural Control Committee.** The "Architectural Control Committee" shall mean the Architectural Control Committee as more fully set forth in Article IX above.

Section 12.3. Building Construction. Not more than one single-family dwelling, not to exceed two and onehalf (2 ½) stories in height, shall be erected on any Lot unless otherwise approved, in writing, by the Architectural Control Committee.

Section 12.4. Setback and Building Lines.

- (a) Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the zoning and setback codes of the City of Goose Creek. However, in each case individual setbacks and sidelines must be approved by the Architectural Control Committee for its aesthetic value and the Architectural Control Committee may require a greater setback so long as the required setback does not violate the set back requirements of the City of Goose Creek. In certain cases, the Architectural Control Committee may require an Owner to seek a variance from said setback requirements, if necessary to protect important trees, vistas or to preserve aesthetic value.
- (b) **Walls and Fences.** All walls and fences must be approved by the Architectural Control Committee in accordance with guidelines on file with the Architectural Control Committee. Generally, fences are to be located to the rear of the dwelling. The construction side of all fences shall face the interior to the lot. All fences shall be unstained, unpainted pressure treated wooden fences, or either stockade or shadowbox construction. No chain link fences shall be allowed. Fences shall not exceed 6' in height and all fences shall conform to the guidelines.
- (c) **Subdivision of Lots.** One or more Lots or parts thereof may be subdivided or combined to form one single building Lot when approved, in writing, by the Architectural Control Committee, and, in such event, the building line requirements provided herein shall apply to such Lots as re-subdivided or combined, and any sideline easement as provided in paragraph 22, with regard to sidelines to be abandoned, shall be deemed waived unless there is actually a utility within said easement
- (d) **Terraces, Eaves and Detached Garages.** For the purpose of determining compliance or non-compliance with the foregoing building line requirements, terraces, stoops, eaves, wing-walls, and steps extending beyond the outside wall of a structure, shall not be considered as part of the structure. No side yard shall be required for any detached garage or accessory outbuilding (unless required by the applicable zoning ordinance) which has been approved, in writing, by the Architectural Control Committee; provided, all such detached structures must be to the rear of the main dwelling and must not encroach upon the property of an adjacent owner.

Section 12.5. Building Requirements. The enclosed living areas of the main structure, exclusive of open porches, porte-cochere, garages, carports and breezeways shall be not less than 1000 square feet. Changes in exterior siding and paint color must be approved by Architectural Control Committee.

Section 12.6. Obstructions to View at Intersections. The lower branches of trees or other vegetation shall not be permitted to obstruct the view at intersections.

Section 12.7. Delivery Receptacles and Property Identification Markers. The Architectural Control Committee shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, as well as property identification markers.

Section 12.8. Use of Outbuildings and Similar Structures. No structure of a temporary nature, unless approved in writing by the Architectural Control Committee, shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently; provided, this paragraph shall not be construed to prevent the Declarants and those engaged in construction from using sheds, trailers or other temporary structures during construction.

Section 12.9. Completion of Construction. The Architectural Control Committee shall have the right to take appropriate court action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction and six (6) months on the completion of the exterior.

Section 12.10 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided, however, dogs, cats or other household pets may be kept, not to exceed a total of three (3) such animals, provided they are not kept, bred or maintained for any commercial purposes. The foregoing limitation on the number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three(3) months old. Such animals must not constitute a nuisance or cause unsanitary conditions. If any animal may, in the sole discretion of the Board of Directors or its designated committee, make an objectionable amount of noise, endanger the health of the occupants of other Lots, or otherwise constitute a nuisance or inconvenience to the Owner of other lots such animal shall be removed upon the request of the Board of Directors or may be removed at the direction of the Board of Directors. An Owner's failure to remove fecal matter or other solid waste left in any Common Area or Lot by an animal owned by an occupant of such Owner's Lot (or their guests or invitees) shall be conclusively deemed to be a nuisance, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon repeated violations, the removal of such animal as described above. The cost and expense of any removal of an animal under this Section shall be the sole responsibility of the Owner of the Lot where the animal was kept (or was brought by a guest or invitee). In the event that such Owner fails to reimburse the Association for such cost and expense within twenty-one (21) days after the Association's demand for reimbursement, such cost and expense shall become part of the annual assessment against such Lot, and the amount of such cost or expense assessed against such Lot shall not be counted or considered in determining whether a maximum assessment has been made against such assessed Lot.

Every person owning or having possession, charge, care, custody or control of any dog, cat or other uncaged pet shall keep such pet exclusively inside his own residential unit or inside the confines of such Owner's Lot; provided, however, that such pet may be off the Owner's Lot if it be under the control of a competent persons and restrained by a chain, lease or other means of adequate physical control. All Owners must control their pets at all times, whether or not such Owner is present, in a manner that will prevent any pet from (i) making noise at objectionable sound levels for extended periods of time, whether

continuously or intermittently, (ii) endangering the health and safety of other Owners, their families, guests or invitees, or (iii) otherwise constituting a nuisance or inconvenience to the Owner(s) of any other Lot; all of the foregoing as determined by the Association. Any pet identified by the Association as a potentially dangerous animal constituting an unreasonable risk or threat to any other Owner or as to other Owners generally, whether or not such risk or threat is deemed immediate or imminent, or as to the family, guests or invitees of any Owner or other Owners generally, whether due to the type, kind or species of such animal, or its size, natural proclivities or inherent nature, or as a result, whether in whole or in part, of the known tendencies, habits, disposition or history of such animal, or as a result of the manner in which such animal generally is supervised and controlled by its owner, or for any combination of any of the foregoing reasons, shall be subject to such further restrictions or controls as the Association may in its absolute discretion deem appropriate, which further restrictions or control may include, without limitation any one or more of the following additional requirements: (a) constant restraint of the animal by means of a cage, chain, leash or other means deemed appropriate and approved by the Association at all times while such animal is outside an Owner's residential unit, even while such animal is on such Owner's Lot; (b) limitations on the time periods or durations that such animal is permitted to be outside of its Owner's residential unit; (c) prohibiting the animal to be outside at any time without its Owner present; or (d) permanent removal of the animal from the Property.

Section 12.11. Nuisances and other Offensive Activities. No activity deemed noxious or offensive by the Architectural Control Committee or the Board shall be carried on upon any Lot or within the Common Area, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood as determined by said Architectural Control Committee or Board. No activity which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body shall be carried on upon any Lot or within the Common Area. Examples of such offensive activities shall include, but not to be limited to, the origination or emission of any loud or disturbing noise or vibrations; the maintenance of any auto repair site, the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards; or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the community.

No Owner or Occupant of a Lot may use, or allow the use of, the Lot or any portion thereof at any time in any way or for any purpose which may endanger the health or unreasonably annoy or disturb or cause, in the sole opinion of the Board of Directors, a nuisance. No Owner or Occupant of a Lot may use or allow the use of the Lot in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m., which can be heard by persons on another Lot that will, in the sole discretion of the Board, interfere with the rights, comfort, or convenience of the other Owner(s) or Occupant(s). No Owners shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Subdivision or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto. The Architectural Control Committee or the Board of Directors may establish reasonable rules and regulations for enforcing the provisions of the Section.

Section 12.12. Signs. No advertising "For Sale" or "For Rent" signs or billboards shall be erected on any Lot or displayed to the public on any Lot that are larger than six (6) square feet, shall only refer to the premises on which displayed, shall be located within fifteen (15') feet of the main structure, but not less than twenty five (25') feet from the front street right-of-way and shall not exceed more than one (1) sign per Lot. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole, nor to signs for selling and/or marketing house during the development and construction period, which period shall not exceed five (5) years from the date hereof, provided such signs are approved by the Architectural Control Committee. Also, the provisions of this section shall not apply to anyone who becomes the owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage or as transferee pursuant to any proceeding in lieu thereof.

Section 12.13. Aesthetics, Nature Growth, Screening, Underground Utility Service. No tree greater than six (6) inches or more in diameter when measured two (2') feet above ground level shall be removed without the approval of the Architectural Control Committee. Garbage cans and equipment shall be screened to conceal them from view of neighboring Lots and streets. All residential utility service and lines to residences shall be underground. Such approval shall not constitute approval from the City of Goose Creek which, under its tree protection ordinance, must also approve tree removal. No personal storage of but not limited to bicycles, grills, and toys shall be allowed on the front porch, front or side yards.

Section 12.14 Antennae and Satellite Equipment. No radio or television transmission or reception towers or antennae shall be erected on the Property, except as may be permitted under Federal regulations. The location and size of any antenna, satellite dish or similar equipment to be erected on the Property must be approved by the Architectural Control Committee. No satellite dish or similar apparatus shall exceed one meter (39.37 inches) in diameter. The Architectural Control Committee may consider visibility of such devices from streets, Common Areas or other buildings or improvements in determining whether to approve the size or location of such device(s). Notwithstanding the foregoing, the Architectural Control Committee shall regulate antennas, satellite dish or any other similar equipment, or apparatus for the transmission or reception of televisions, radio, satellite, or other signals of any kind only in strict compliance with all federal laws and regulations.

Section 12.15. Trailers, Trucks, School Buses, Boats, Boat Trailers, Trail Bikes, All Terrain Vehicles. No house trailers or mobile homes, campers or other habitable motor vehicles of any kind, school buses, motorcycles, trucks or commercial vehicles over one (1) ton capacity, boats, boat trailers shall be kept, stored or parked overnight either on any street or on any Lot, except within enclosed garages, or screened from the street(s) as approved by the Architectural Control Committee.

Section 12.16. Repair and Maintenance of Homes and Lots. Owners shall maintain their property and the exterior of their dwelling in good order and repair, including but not limited to, the seeding, watering and mowing of all lawns and yards, keeping all sidewalks and driveways, if any neat, clean, and in good repair, and free of ice and snow, the pruning and cutting of trees and shrubbery and the painting (or other appropriate external care) of all structures on the property, including without limitation, roofs, gutters and downspouts, siding and fascia, all in a manner and with such frequency as is consistent with good property management and maintenance. Dead trees, shrubs, weeds, and unsightly landscaping shall be removed promptly. The Homeowner shall maintain the exterior building surfaces, roof gutters, driveways, walks, soffit, fascia, and all other exterior surfaces free from mold, mildew or algae. The Homeowner shall pressure wash the exterior of the exterior building surface to maintain said exterior surfaces free from mold, mildew or algae.

In the event any owner shall fail to maintain their property and the exterior of their dwelling in good order and repair including, but not limited to maintenance of the exterior building surfaces, roof gutters, driveways, walks, soffit, fascia, and all other exterior surfaces free from mold, mildew or algae, and fails to pressure wash the exterior of the exterior building surface to maintain said exterior surfaces free from mold, mildew or algae, such inaction may, in the sole discretion of the Board of Directors or its designated committee, constitute a violation of this Section, or otherwise constitute a nuisance or inconvenience to the Owner(s) of other lots, the Board of Directors reserves the right to correct such condition and provide such maintenance and repair and removal of mold, mildew or algae to and from the property and the exterior of the dwelling, including, but not limited to all building surfaces, roof gutters, driveways, walks, soffit, fascia, and all other exterior surfaces. An Owner's failure, after notice, to correct such maintenance or repair condition and to provide and conduct such maintenance and repair and removal of mold, mildew or algae to and from the property and the exterior of the dwelling, including, but not limited to all building surfaces, roof gutters, driveways, walks, soffit, fascia, and all other exterior surfaces upon such property and Lot shall be conclusively deemed to be a violation of this Section, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon

repeated violations, the removal of the mold, mildew or algae from the exterior of the dwelling on the Lot or from the exterior building surfaces, roof gutters, driveways, walks, soffit, fascia, and all other exterior surfaces. The cost and expense of any such action under this Section shall be the sole responsibility of the Owner of the Lot (or his guest or invitee). In the event that such Owner fails to reimburse the Association for such cost and expense within twenty-one (21) days after the Association's demand for reimbursement, such cost and expense shall become part of the annual assessment against such Lot.

Section 12.17. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If such litter or other materials is found on any Lot, the same will be removed by the Lot owner of such Lot, at the Lot owner's expense, upon written request of the Architectural Control Committee. Garbage containers shall be stored so as not to be visible from the street or Common Areas except on garbage pick up days and all such garbage containers shall be removed the morning following garbage pick up day. The placement and pick up of trash and the location of garbage containers shall be in compliance with the ordinances and regulations of the County of Berkeley and the City of Goose Creek.

Section 12.18. Changing Elevations. No Lot owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

Section 12.19. Easements. Lots subjected to this Declaration shall be subject to those easements, if any, shown as set forth on any recorded plat thereof. Also, easements for installations and maintenance of utilities and drainage facilities are hereby reserved over five (5') feet of each side line of each Lot and over the rear fifteen (15') feet of each Lot subjected to this Declaration. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which public authority or utility company is responsible.

Section 12.20. Driveways and Entrance to Garage. All driveways, driveway extension, and entrance to garages shall be of a substance approved in writing by the Architectural Control Committee and of uniform quality. A maximum of four (4) cars shall be parked upon the driveway, driveway permitting. Parking upon lawns, or any grass surface, or upon the common areas shall be prohibited. Except with prior written approval of the Board of Directors, there shall be no overnight parking on any street.

Section 12.21. Swimming Pools. In-ground swimming pools are permitted, but above ground swimming pools may not be constructed, erected or maintained on any lot with the subdivision. The following types of pools shall not be considered to be restricted by the Covenants: Children's Pools; Small children's pools, used anywhere on the property, shall not be restricted provided they are stored in the evenings. Inflatable Pools; Large inflatable (temporary) pools shall be restricted unless stored in the evenings. Hot tubs or spas which are installed in the back yard of the property on a patio or deck (approved by the Architectural Control Committee) shall not be restricted provided they are no larger than 12 person occupancy.

Section 12.22 Streets. All streets fronting the lots in the subdivision shall be dedicated to the general public and maintained by the City of Goose Creek or Berkeley County. The Association may promulgate such rules and regulations concerning the use of said streets as it deems advisable for the safety and welfare of the Owners.

Section 12.23. Landscaping and Lawn Care. Only grass, ornamental plants and shrubbery may be planted in the front or the side yard of any Lot. All other plantings in these yards may be done only with the prior written approval of the Architectural Control Committee. No vegetable garden, hammocks, statuary or recreational equipment may be placed, erected, allowed or maintained upon the front or side yard of

any Lot without the prior written consent of the Architectural Control Committee.

Each owner shall keep his Lot(s) and all improvements located thereon in good order, condition and repair, including, but not limited to, seeding, watering, and mowing of all lawns and grounds, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all such improvements in a manner consistent with property maintenance and management. No lawns, grass, weeds or underbrush shall be allowed to grown to a height exceeding six (6") inches on any Lot.

In the event any owner shall fail to maintain his Lot and all improvements thereon in good order condition and repair including, but not limited to permitting the lawns, grass, weeds or undergrowth to grow to a height in excess of six (6") inches, such inaction may, in the sole discretion of the Board of Directors or its designated committee, constitute a breeding ground for rats and other vermin and endanger the health of the occupants of other Lots, or otherwise constitute a nuisance or inconvenience to the Owner(s) of other lots, the Board of Directors reserves the right to correct such condition and cut or remove the lawns, grass, weeds or undergrowth. An Owner's failure, after notice, to correct such condition and cut or remove the lawns, grass, weeds or undergrowth upon any Lot shall be conclusively deemed to be a nuisance, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon repeated violations, the removal of such offending growth and the cutting or remove of the overgrown lawn, grass, weeds or undergrowth as described above. The cost and expense of any such action under this Section shall be the sole responsibility of the Owner of the Lot (or his guest or invitee). In the event that such Owner fails to reimburse the Association for such cost and expense within twenty-one (21) days after the Association's demand for reimbursement, such cost and expense shall become part of the annual assessment against such Lot.

Section 12.24. Basketball Goals. No permanent basketball goal shall be erected without the prior written approval of the Architectural Control Committee. No temporary basketball goal shall be permitted to be placed or left on any street, or on any property other than a driveway.

Section 12.25. Outside Drying. No clothing or other household fabrics will be hung in the open on any Lot in view from any street. The same shall be hung from an umbrella or retractable clothes hanging device which is removed from view when not in use and the same will never be permitted to remain in use overnight.

ARTICLE XIII GENERAL PROVISIONS

Section 13.1. Amendments. So long as Declarants own any Property described in Exhibit "A" and except as otherwise specifically provided herein, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners holding ninety percent (90%) of the votes in the Association.

In addition to complying in all respects with South Carolina law, as amended from time to time, each amendment adopted by the Board of Directors shall be evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, setting forth in full the text of such amendment and certifying that such amendment has been approved as required herein.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause

Section 13.2. Amendments by Declarant. Notwithstanding any other provision herein or in the Bylaws, Declarant may amend this Declaration without the consent of the Association, or any Owner, easement grantee, or any mortgagee if, in Declarant's opinion, such amendment is necessary to (i) bring any provision of the Declaration into compliance or conformity with the provisions of any applicable governmental statute,

rule or regulation or any judicial determination which is in conflict with this Declaration; (ii) enable any reputable title insurance company to issue title insurance coverage with respect to any Lot subject to this Declaration; (iii) enable any mortgagee to make mortgage loans on any Lot or other Improvements subject to this Declaration; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on any Lot subject to this Declaration; (v) enable any insurer to provide insurance required by this Declaration; or (vi) clarify any provision of this Declaration or eliminate any conflict between provisions of this Declaration. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. Further, Declarants shall have the authority to amend this Declaration at any time to comply with the requirements of any governmental body such as Veterans Administration, Federal Housing Administration, Department of Housing and Urban Development, City of Goose Creek, Berkeley County or by the Federal National Mortgage Association or Federal Home Loan Bank Board.

Section 13.3. Enforcement. Each Owner shall comply strictly with this Declaration, the Bylaws and the published rules and regulations of the Association adopted pursuant to this Declaration, as they may be lawfully amended from time to time. Failure to comply shall be grounds for imposing fines, for instituting an action to recover sums due, for damages and/or for injunctive relief or specific performance, such actions to be maintainable by the Board of Directors on behalf of the Association or in a proper case, by an aggrieved Owner. If Declarant or the Association employs legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorney's fees, shall be paid by the violating party. Failure on the part of the Declarant, the Association, or any aggrieved Owner in exercising any right, power or remedy herein provided shall not be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to any violation or breach occurring prior to subsequent thereto. No right of action shall accrue in favor of nor shall any action be brought or maintained by any Person against Declarant or the Association, for or on account of any failure to bring an action on account of any purported or threatened violation or breach by any Person of the provisions of this Declaration, the Bylaws or any rules or regulations of the Association

Section 13.4. Non-Monetary Defaults. In the event of a violation by any Residential Owner or any tenant of a Residential Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the Association shall notify the Residential Owner and any tenant of the Residential Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not cable of being cured within such seven (7) day period, if the Residential Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association or if any similar violation is thereafter repeated, the Association may, at its option:

1. Impose a fine against the Residential Owner or tenant as provided in this Article; and/or
2. Commence an action to enforce the performance on the part of the Residential Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
3. Commence an action to recover damages; and/or
4. Take any and all actions reasonable necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, Improvement or change which has not been approved by the "Committee" or erected in accordance with the Committee's approval (as herein defined), or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge

of ten percent (10%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable Legal Fees, shall be assessed against the applicable Residential Owner as an Individual Expense Assessment. The Association shall have a lien for any such Individual Expense Assessment and any associated Interest, costs or expenses, including Legal Fees, and may take such action to collect such Assessment or foreclose said lien in the manner of any other Assessment as provided in this Declaration. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records or applicable court of jurisdiction.

Section 13.5. Fines. The amount of any fine shall be determined by the Board, and shall not exceed any amount mandated by applicable law, if any. Prior to imposing any fine, the Residential Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Residential Owner or tenant of not less than fourteen (14) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of this Declaration, Bylaws or rules and regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Residential Owner of a leased Living Unit shall have the right to participate in any hearing involving the tenant of such Living Unit, and the Association shall provide notice to the Residential Owner of such Living Unit concurrently with the Association's notice to the tenant of the subject Living Unit. The Residential Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Residential Owner or tenant. If the Residential Owner or tenant fails to attend the hearing as set by the Board, the Residential Owner or tenant shall be deemed to have admitted the allegations contained in the notice of the Residential Owner or tenant. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the Board's decision at the hearing. Any fine levied against a Residential Owner shall be deemed an Individual Expense Assessment, and if not paid when due all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

Section 13.6. Duration. The provisions of this Declaration shall run with the land and be binding upon the title to the Property, shall be binding upon and inure to the benefit of all Owners, the Declarant, and the Association and their respective heirs, executors, legal representatives, successors, and assigns, and successors in title, and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, provided any rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed for unlimited successive ten (10) year periods, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, unless otherwise agreed to in writing by the then Owners of at least seventy-five (75%) percent of the Lots. If the Owners of at least seventy-five (75%) percent of the Lots agree to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Public Records. Said instrument shall contain a certificate wherein the President of the Association affirms that such termination was duly adopted by the requisite number of votes. No termination of this Declaration shall be enforceable or valid during the Development Period unless Declarant consents in writing to the termination.

Section 13.7. Perpetuities. In the event that any of the provisions of this Declaration are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

Section 13.8. Interpretation. This Declaration shall be construed in accordance with the laws of the State of South Carolina. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of

Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The captions herein as to the contents of various portions of the Declaration are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular provisions to which they refer. The effective date of this Declaration shall be the date of its filing of record in the Public Records.

Section 13.9. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine and non-personal entities, as well as the singular and plural wherever the context requires or permits.

Section 13.10. Severability. Should any covenant or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase, or term of this Declaration be declared or rendered void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

Section 13.11. Notice. All notices or other written communication to Declarant hereunder may be delivered by service in person or by mailing the same by certified mail postage prepaid with return receipt requested, or by overnight courier addressed to the following:

321 Partridge Creek Road
Summerville, South Carolina 29483

Or to such other address as the Association may from time to time give notice of to the Owners and Declarant.

All notices to Owners shall be delivered or sent to such address as has been designated in writing to the Association, or if not address has been so designated, at the address of such Owner's respective Lot.

All notices or other written communication shall be deemed given when in writing and delivered by hand or three (3) calendar days after being deposited in the United State Mail.

Section 13.12. Assignment. Declarant reserves the right to assign to the Association or any one or more persons, firms, corporations, partnerships, or associations, any and all rights, powers duties, easements and estates reserved or given to the Declarant in this Declaration, including, without limitation, the right to grant and assign utility easements from time to time over, under, and within Common Properties.

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

EXHIBIT A

All those certain 106 lots, known and designated as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 102, 103, 104, 105, 106, 107, 108 and 109 Sophia Landing at Montague Plantation as shown on that certain preliminary plat prepared by HEG Engineering Consultants dated April 30, 2010 entitled: "PLAT TO FORM 106 LOTS TO INCLUDE LOT 1 THROUGH LOT 98 & LOT 102 THROUGH Lot 109 SOPHIA LANDING AT MONTAGUE PLANTATION SURVEYED FOR MALPHRUS LAND, LLC LOCATED IN THE CITY OF GOOSE CREEK BERKELEY COUNTY, SC" and recorded JULY 22, 2010 in the Office of the ROD for Berkeley County in Plat Cabinet O at Page 49.50 and known generally as Sophia Landing at Montague Plantation

IN WITNESS WHEREOF, Declarant has executed this Declaration this 20 day of September, 2010.

WITNESS:

Malphrus Land, LLC

Ann R. Cofhr
[Signature]

[Signature]
Davant S. Malphrus

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me by Malphrus Land, LLC this 20th day of September, 2010

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 03/22/2014

IN WITNESS WHEREOF, Dan Ryan Builders of South Carolina, Inc., the Owner and title holder to Lots 3, 6, 7, 51, 97 and 98 Sophia Landing at Montague Plantation does hereby join in, consent and agree to be bound by the terms and conditions of the within DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SOPHIA LANDING at MONTAGUE PLANTATION and has executed this Declaration this 21 day of SEPT. 2010.

WITNESS:

[Signature]
[Signature]

Dan Ryan Builders of South Carolina, Inc

[Signature]
J. Albert van Overeem

STATE OF SOUTH CAROLINA)
COUNTY OF)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me by Dan Ryan Builders of South Carolina, Inc. this 21 day of SEP, 2010.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 8-18-2016



Jacqueline L. Woodlee Hinson
NOTARY PUBLIC
State of South Carolina
My Commission Expires
August 18, 2016

EXHIBIT "B"

SOFIA LANDING AT MONTAGUE PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

1. INTRODUCTION

These are the By-laws of Sofia Landing at Montague Plantation Property Owners Association, Inc., a nonprofit corporation organized under the laws of the State of South Carolina (herein-after called "the Association"), which is organized for the purpose of managing the business of the homeowners association for the community known as Sofia Landing at Montague Plantation Subdivision in Berkeley County, South Carolina. The Subdivision (the "Subdivision") is identified more particularly in the stated Declaration of Covenants and Restrictions for the Subdivision for which these By-laws are attached as Exhibit "B" to the Declaration. The developer of this Subdivisions is the Declarant, Malphrus Land, LLC, referred to as "Declarant".

- (A) The provisions of these By-laws are applicable to any and all land subject to the Declaration, and the terms and provisions of these By-laws are expressly subject to the effect of the terms, provisions, conditions, and authorizations contained in the Declaration. The terms and provisions of the Declaration shall be controlling wherever and whenever, if ever, they are or may be in conflict with these By-laws.
- (B) All present or future co-owners, tenants, future tenants, or their employees, invitees, licensees, or any other person that might use the lands of the Subdivision, or any of the facilities thereof in any manner, are subject to the regulations set forth in these By-laws and in the Declaration, as either, or both, may be amended or supplemented from time to time.
- (C) The office of the Association shall be: Malphrus Land, LLC., 321 Partridge Creek Road, Summerville, SC 29483 or at any other place at the Board of Directors of the Association may designate from time to time.
- (D) The fiscal year of the Association shall begin on January 1 and end on December 31 of each year, unless changed by the Board of Directors of the Association as herein provided .
- (E) The seal of the Association shall bear the name of the Association and the words "South Carolina" .
- (F) There shall be no dividends or profits paid to any members nor shall any part of the income of the Association be distributed to its Board of Directors or officers. In the event there are any excess receipts over disbursements as a result of performing services, such excess shall be applied against future expenses, etc. The Association shall not pay compensation to its members, directors or officers for services rendered. At anyone time, the Board may retain a management firm, and may contract with said firm to provide management for the Association and its subordinate regimes, or operator owned/controlled property, to include, but not be limited to, the following services:
 - (1) financial services;
 - (2) administrative and clerical services; and
 - (3) maintenance, to include providing of goods, materials, labor and equipment, personnel supervision, contract labor, landscaping, and security.

Upon final dissolution and liquidation, the Association may make distribution to its members as is permitted by law or any Court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income.

This Association shall issue no shares of stock of any kind or nature whatsoever. Membership in the Association and the transfer of that membership as well as the number of members/votes shall be in accordance with the terms and conditions of the Declaration and the By-laws of the Association, and the voting rights of the Owners shall be as set forth in the Declaration and/or these By-laws of the Association.

2. MEMBERSHIP. VOTING. QUORUM. PROXIES

- (A) All persons who are Owners as defined in the Declaration shall be members of this Association, provided, however, that no non-owner, tenant, sub-lessee, or assign shall be a member, nor have voting rights in this Association. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one (1) vote be cast or more than one (1) office held for each Lot, except for those Class B voting rights granted to or reserved by the Declarant in the Declaration. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary , no Owner, whether one or more persons, shall have more than one membership/vote per Lot, except for those Class B voting rights granted to or reserved by the Declarant in the Declaration. Any membership shall automatically terminate when an Owner, as defined herein, is no longer seized and vested with title to any real property within the Subdivision, and membership and/or voting rights in the Association shall be limited to such Owners.
- (B) The quorum at members meetings shall be as set forth in Article VIII of the Declaration. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum.
- (C) The vote of the Owners of a Lot owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate or appropriate resolution signed by all of the Owners of the Lot and filed with the Secretary of the Association, and such certificate or resolution shall be valid until revoked by subsequent certificate or resolution. If such a certificate is not on file, the vote of such Owners shall not be considered in determining the requirement for a quorum, nor for any other purpose.
- (D) Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of the meeting for which their use is sought.
- (E) Approval or disapproval of an Owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who casts the vote of such Owner in an Association meeting.
- (F) Except where otherwise required under the provisions of the Certificate of Incorporation of the Association, these By-laws, the Declaration, or where the same may otherwise be required by law, the affirmative vote of the Owners holding at least a majority of the total votes cast at a meeting at which a quorum is present, shall be binding upon the members/Owners.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

- (A) The annual members meeting shall be held at the office of the Association or such other place as may be designated by the Board of Directors, on the first Wednesday in March of each year or at such other time as shall be designated by the Board of Directors, for the purpose of transacting any business authorized to be transacted by the members. The first annual meeting shall be held in 2011.
- (B) Special members meetings shall be held whenever called by the President or Vice President, by a majority of the Board of Directors, or upon written request of the members who are entitled to vote one-

fourth (1/4) of all votes of the Class A Membership, and must be called by such officers upon receipt of a written request from the members of the Association owning a majority of the outstanding votes.

- (C) Notice of all members meetings, regular or special, shall be given by the President, Vice President or Secretary of the Association, or other officers of the Association in the absence of said officers, to each member, unless waived in writing, such notice to be written or printed and to state the time and place and object for which the meeting is called. Such notice shall be given to each member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting, which notice shall be mailed or presented personally to each member within said time. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him or her. If mailed, such notice shall be deemed properly given when deposited in the United States mail addressed to the member at his or her post office address as it appears on the records of the Association, the postage thereon prepaid. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. If any members meeting cannot be organized because a quorum has not been attained, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, whenever the latter percentage of attendance may be required as set forth in the Certificate of Incorporation, these By-laws or the Declaration, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present.
- (D) At meetings of membership, the President shall preside or, in the absence of the President, the membership may select a chairman in the event that the Board does not designate an acting President or presiding officer for any such meeting.
- (E) The order of business at annual members meetings, and, as far as practical, at any other members meeting, shall be:
 - (1) Calling of the roll and certifying proxies
 - (2) Proof of notice of meeting or waiver of notice
 - (3) Reading of minutes
 - (4) Reports of officers
 - (5) Reports of committees
 - (6) Unfinished business
 - (7) New business
 - (8) Adjournment

4. BOARD OF DIRECTORS

(A) Governing Body; Composition

The affairs of the Association shall be governed by a Board of Directors. Until the first annual meeting of the members, the affairs of the Association shall be managed by a Board of five (5) directors selected by the Declarant. Upon cessation of Class B membership pursuant to Section 7.4 of the Declaration, the affairs of the Association shall be managed by a Board of Directors elected as provided herein.

(B) Term of Office

Upon cessation of Class B membership pursuant to Section 7.4 of the Declaration, at the annual meetings, the members shall elect one (1) director for a term of one (1) year, two (2) directors for a term

of two (2) years and two (2) directors for a term of three (3) years, and at each annual meeting thereafter. The directors shall be elected by a majority of the votes cast by members at the meeting called for said purpose. In voting for directors, the Class A members shall have the number of votes set out in Section 7.4 of the Declaration.

(C) Removal

Any director may be removed from the Board, with or without cause, by a vote of the members holding at least a majority of the votes in the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. In voting to remove directors, the Class A members and Class B members shall have the number of votes set out in Section 7.4 of the Declaration.

(D) Compensation

No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

(E) Action Taken Without a Meeting

The directors shall have the right to take any action in the absence of a meeting of the directors which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

5. MEETING OF DIRECTORS

(A) Regular Meetings

Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

(B) Special Meetings

Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director mailed or presented personally to such director within such time.

(C) Quorum

A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

If any director's meeting cannot be organized because a quorum has not attended, or because the greater percentage of the directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-laws or the Declaration, the directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance is greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a

meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum.

6. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

(A) Powers

The Board of Directors shall manage and direct the affairs of the Association and may exercise all of the powers of the Association subject only to approval by the Owners, as designated and defined in the Declaration, when such is specifically required by these By-laws. The Board of Directors shall exercise such duties and responsibilities as shall be incumbent upon it by law, the Declaration or these By-laws, or as it may deem necessary or appropriate in the exercise of its powers and shall include, without limiting the generality of the foregoing, the following:

- (1) To prepare and adopt a budget, make, levy and collect assessments against members and members Lots to defray the cost of the Common Areas and facilities of the Subdivision, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;
- (2) To carry out the maintenance, care, upkeep, repair, replacement, operation, surveillance and the management of the Common Areas, Recreational Amenities, services and facilities of the Subdivision wherever the same is required to be done and accomplished by the Association for the benefit of its members;
- (3) To carry out the reconstruction of improvements after casualty and the further improvement of the property, real and personal;
- (4) To make and amend regulations governing the use of the Property, real and personal, in the Subdivision so long as such regulations or amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such Property under the terms of the Declaration;
- (5) To acquire, operate, lease, manage and otherwise trade and deal with Property, real and personal, including Lots in the Subdivision, as may be necessary or convenient in the operation and management of the Association, except those which may be required by the Declaration to have approval of the membership of the Association;
- (6) To enforce by legal means the provisions of the Certificate of Incorporation and By-laws of the Association, the Declaration and the regulations hereinafter promulgated governing use of the property in the Subdivision;
- (7) To pay all taxes and assessments which are liens against any part of the Subdivision other than Lots and the appurtenances thereto, and to assess the same against the members and their respective Lots subject to such liens;
- (8) To carry insurance for the protection of the Subdivision the members of the Association, and the Association against casualty, liability and other risks;
- (9) To pay all costs of power, water, sewer and other utility services rendered to the Association and not billed to the Owners of the separate Lots;
- (10) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association as well as to dismiss said personnel;
- (11) To adopt and publish rules and regulations governing the use of the Common Areas and facilities of the Association, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (12) To suspend the voting rights and right to use of the Common Areas and facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

- (13) To exercise for the Association all powers, duties and authority vested in or delegated to this Association by the Declaration and not reserved to the membership by other provisions of these By-laws, or the Certificate of Incorporation;
- (14) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- (15) To employ a manager, a managing agent, an independent contractor, or such other employees or agents as they deem necessary, and to prescribe their duties; and
- (16) To make special assessments to the extent provided in the Declaration and these By-laws.

(B) Duties

It shall be the duty of the Board of Directors to:

- (1) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one fourth (1/4) of the Class A Members who are entitled to vote;
- (2) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (3) Establish a fiscal year;
- (4) Establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, at least thirty (30) days in advance of each annual assessment;
- (5) Establish the initial deposit to be made by each member in order to bring his total assessment deposit to the level required to meet his proportional share of the Common Expense;
- (6) Send written notice of each assessment to every Lot Owner, at least thirty (30) days in advance to each annual assessment period, and levy all such assessments as liens;
- (7) Collect all such assessments at monthly or other regular intervals as may be determined at its discretion;
- (8) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;
- (9) Issue, or to cause an appropriate officer to issue, upon demand by any person, a Certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (10) Procure and maintain liability and fire and other hazard insurance on property owned by the Association;
- (11) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (12) Cause all of the facilities to be maintained;
- (13) Have a management agent for any of the above; and
- (14) Procure and maintain officers and directors liability insurance as it may deem appropriate.

(C) Meeting Location

Notwithstanding anything contained in these By-laws to the contrary, any meeting of members of directors may be held at any place within or without the State of South Carolina.

(D) Actions without Meetings

To the extent now or from time to time hereafter permitted by the law of South Carolina, the directors may take any action which they might take at a meeting of directors without a record of any such action so taken, signed by each director, to be retained in the Association's minute book and given equal dignity by all persons with the minutes of meetings led and held.

(E) Indemnity

The Association shall indemnify every director and every officer, their heirs, executors and administrators, against all loss, damages, costs or expenses of any type reasonably incurred by him in connection with any action, suit, or proceeding to which he is made a party by reason of his being or having been a director or officer of the Association, except as to such matters wherein shall be finally adjudged liable of gross negligence or willful misconduct. The Board may obtain for the Association directors and officers liability insurance coverage in such amounts as the Board deems necessary and appropriate.

7. OFFICERS

- (A) The executive officers of the Association shall be the President and Secretary, who shall be directors; a Vice President; and a Treasurer, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.
- (B) The President shall be the chief executive officer of the Association. The President shall have all the powers and duties which are usually vested in the office of the President of an association, including, but not limited to, the power to appoint committees from among the members from time to time, as the President may in the President's discretion determine appropriate, to assist in the conduct of the affairs of the Association.
- (C) Any Vice President, unless the majority may select a presiding officer, shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.
- (D) The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an association and as may be required by the directors or President. The Assistant Secretary shall perform the duties of Secretary when the Secretary is absent.
- (E) The Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of Treasurer.
- (F) The compensation of all officers and employees of the Association shall be fixed by the directors. This provision shall not preclude the Board of Directors from employing a director as an employee of the Association, nor preclude the contracting with a director for management of the Association.

8. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth both in these By-laws and in the Declaration shall be supplemented and complimented by the following provisions:

- (A) The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot; for each subordinate regime; and for those developer-owned entities. Such an account shall designate the name and address of the Owner(s) or ownership/control entity, the amount of each assessment against each category set forth immediately hereinabove, the dates and amount in which assessments come due, the amounts paid upon the account and the balance due upon assessments.
- (B) The Board of Directors shall adopt a budget for each fiscal year which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:
 - (1) Common Expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts necessary for maintenance, repair and/or replacement of: (a) all buildings and other improvements located within the Association's Common Areas; (b) all roads (not dedicated to the public), walks, lagoons, ponds, landscaped areas/natural areas and other improvements situated within the Common Areas or within easements encumbering Lots; (c) such security systems, utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the service district, public or private utility or other person; (d) all lawns, trees, shrubs, hedges, grass and other landscaping situated within the Subdivision (but not on Lots) as it may be constituted from time to time; and (e) all maintenance of landscape and/or buffer easements; and
 - (2) Proposed Assessments against each member. Copies of the proposed budget and proposed Assessments shall be transmitted to each member at least thirty (30) days prior to the first day of the fiscal year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member concerned. Delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board of Directors to at any time in their sole discretion levy an additional Assessment in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.
- (C) The Board of Directors shall determine the method of payment of such Assessments and the due dates thereof and shall notify the members thereof. The Assessments will initially be on an annual basis unless changed by a vote of the majority of the Board of Directors.
- (D) The depository of the Association shall be such bank or banks as shall be designed from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors.
- (E) An audit of the accounts of the Association may be made annually and a copy of the report shall be furnished to each member not later than ninety (90) days after the last day of the fiscal year for which the report is made.
- (F) Fidelity bonds may be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such

bonds shall be determined by the directors, but shall be at least one-half (½) the amount of the total annual assessments against members for common expenses. The premiums on such bonds shall be paid by the Association.

9. PHYSICAL MANAGEMENT

Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair and have jurisdiction over the standards of exterior maintenance over all portions of the Common Areas and all Lots, which responsibility shall include the maintenance, repair and/or replacement of: (i) all buildings and improvements located within the Association's Common Areas; (ii) all roads, walks, lagoons, ponds, landscaped areas, natural areas and other improvements situated within the Common Areas or within easements encumbering Lots; (iii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility or other person; and (iv) all lawns, trees, shrubs, hedges, grass and other landscaping situated within the Subdivision (but not on Lots) as it may be constituted from time to time. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (c) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is not that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of Assessments or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under the Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments and charges being a separate and independent covenant on the part of each Owner .

In the event that the Declarant or the Board of Directors determines that: (i) any owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, the Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repairs or replacement, at the sole cost and expense of such Owner, and cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in good and workmanlike manner, or if replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be added to and become a part of the Assessment to which such Owner and his Lot are subject and shall become a lien against such Lot and shall become a lien against such Owner's Lot. In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

10. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-laws or with the statutes of the State of South Carolina.

11. AMENDMENTS TO BY-LAWS

Amendments to these By-laws shall be proposed and adopted in the following manner:

- (A) Amendments to these By-laws may be proposed by the Board of Directors of the Association acting upon vote of the majority of the directors or by members of the Association holding one-fourth (1/4) of the Class A votes in the Association, whether meeting as members or by instrument in writing signed by them.
- (B) Upon any amendment or amendments to these By-laws being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in absence of the President, who shall thereupon call a special joint meeting of the members of the Board of Directors of the Association and the membership for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members if required as herein set forth.
- (C) In order for such amendment or amendments to become effective, the same must be approved by a vote of the members holding at least a majority of the total votes at a meeting at which a quorum is present. Thereupon, such amendment or amendments to these By-laws shall be transcribed, certified by the President or Secretary of the Association, and a copy thereof shall be recorded in the Register of Mesne Conveyances of Berkeley County, South Carolina, within ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the directors and members.
- (D) At any meeting held to consider such amendment or amendments to the By-laws, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.
- (E) No amendment may be adopted or become effective without the prior written consent of the Declarants so long as Declarant retains its Class B voting privileges.
- (F) The Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is a Class B Membership.

12. INSURANCE AND CASUALTY LOSSES

A) Insurance

- 1) The Board of Directors or its duly authorized agents shall have the authority to, and shall obtain and continue in effect, adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief. Such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation, to include anticipated costs of demolition and clearing prior to building, but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.
- 2) The Board or its duly authorized agents shall have the authority and may obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents.

Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

- 3) The Board or its duly authorized agents shall have the authority and may obtain: (i) worker's compensation insurance to the extent necessary to comply with any applicable law; and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.
 - 4) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Subdivision shall be vested in the Board of Directors; provided, however, that no Mortgagee or other security holder of the Common Areas having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law and reasonably obtainable, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:
 - (a) All policies shall be written with a company holding rating of A + 10 or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible,
 - (b) All property insurance policies shall be for the benefit of the Association, and/or its subordinate property regimes, Owners and Owner's Mortgagees, if applicable, as their interests may appear .
 - (c) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.
 - (d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.
 - (e) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners and their respective families, servants, agents, tenants, guests and invitees, including without limitation the Association's manager.
 - (f) All policies shall contain a provision that no policy may be canceled, invalidated or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents, employees, tenants, guests and invitees, or on account of the acts of any director, officer, employee or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.
 - 5) It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, title and other insurance with respect to his own Lot. The Board of Directors may require all Owners, to include the Declarant, to carry public liability and property damage insurance on their respective Properties and Lots, and to furnish copies of certificates thereof to the Association.
- (B) Damage to or Destruction of Common Areas
- Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance

and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction, as used in this Article means repairing or restoring the damages to Property to substantially the same condition in which it existed prior to the fire or other casualty. Within sixty (60) days following any damage or destruction of all or part of the Common Areas, the Association shall use such insurance proceeds as may be available to restore or replace such damaged improvements, to include trees, shrubbery, lawns, landscaping, and natural vegetation. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction, provided that said special assessment is first approved by two-thirds (2/3) of the members of each class of membership present and voting at a meeting duly called to consider said special assessment. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association.

C) Damage to or Destruction of Lots

In the event of damage or destruction by fire or other casualty to any Lots, such Owner shall, at its/their own expense, promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot in a clean, orderly, safe and sightly condition. Such other Owner shall repair or rebuild such Lot other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions and provisions of this Declaration (including without limitation Article 10 hereof) and all applicable zoning, Subdivision, building and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through, without interruption, diligently to conclusion.

13. CONDEMNATION OF COMMON AREAS

A) Whenever all or any part of the Common Areas of the Subdivision shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting with the approval by a vote of two-thirds (2/3) of the total votes of the Association who are voting in person or by proxy, at a meeting duly called for such purpose, for as long as Declarants owns any Lot primarily for the purpose of sale, the award of proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

- 1) If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking, Declarants, for so long as Declarant owns any Lot primarily for the purpose of sale, together with at least seventy-five (75%) percent of the total votes of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors, the Architectural Control Committee, and by the Declarant, for so long as the Declarant owns any Lot primarily for the purpose of sale. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, provided that

said special assessment is first approved by two-thirds (2/3) of the members of each class of membership present and voting at a meeting duly called to consider said special assessment. Such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

- 2) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are not funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds or net funds shall be retained by and for the benefit of the Association.
- 3) If the taking or sale in lieu thereof includes all or any part of a Lot and includes any part of the Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners of any Lot; provided, however, such apportionment may instead be resolved by the agreement of: (i) the Board of Directors; (ii) the Owners of all Lots wholly or partially taken or sold, together with the Mortgagees for such Lot; and (iii) the Declarant, for so long as the Declarant owns any Lot primarily for the purpose of sale.

14. Assessments

A) Purpose of Assessments

The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, and maintaining the Subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors. These assessments are in addition to any charges or assessments imposed by any Sub-Association or ownership sub-structure situate within the Subdivision as it may be constituted from time to time.

B) Creation of Lien and Personal Obligation of Assessments

Each Owner of a Lot by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (i) annual Assessments, such Assessments to be established and collected as provided in the Declaration and in Paragraph 14.C hereof; (ii) special Assessments, such assessments to be established and collected as provided in the Declaration and in Paragraph 14.D hereof; and (iii) individual or specific Assessments, against any particular Lot which are established pursuant to the terms of this Declaration, including but not limited to fines as may be imposed against such Lot in accordance with the provisions of these By-laws and of the Declaration. Any such Assessments, together with late charges as provided in the Declaration, together with court costs and reasonable attorneys fees incurred to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon the Lot, the Owner of which is responsible for payment. Each Owner shall be personally liable for Assessments coming due while he is the Owner of a Lot, and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments shall not

apply to the holder of any first priority institutional Mortgage or to the holder of any Mortgage securing a loan made by the Declarant, its affiliates, successors or assigns, and who take title to a Lot through foreclosure, or to any purchaser of such Lot at such foreclosure sale until title vests at which time charges for Assessments apply as to any other Owner. In the event of co-ownership of any Lot, all of such co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner that unless otherwise provided by the Board, the annual Assessment shall be paid in equal quarterly installments.

C) Computation of Annual Assessments

It shall be the duty of the Board at least thirty (30) days prior to the commencement of the Association's fiscal year to prepare and adopt a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution of reserve account if necessary for the capital needs of the Association. The total annual Assessments shall be divided among the Lots equally, except as provided in the Declaration, so that each Lot, except Lots owned by the Declarants, a Sub-Declarant or a Builder, shall be subject to equal annual Assessments. The Association's budget shall be revisable by the Board without the necessity of approval by the Owners. In the event the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessment in effect for the then current year shall be increased by Ten (10%) percent, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Paragraph 14.D hereof. In addition to, and in furtherance of those Powers and Duties set forth in the Declaration, the Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

- 1) Management fees and expenses of administration including legal and accountant fees;
- 2) Utility charges for utilities serving the Common Areas and charges for other common services for the Subdivision, including trash collection and security services, if any such services or charges are provided or paid by the Association;
- 3) The cost of any policies of insurance purchased for the benefit of all Owners and the Association as required or permitted by the Declaration, including fire, flood and other hazard coverage, public liability coverage and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;
- 4) The expenses of maintenance, operation, repair and replacement of those portions of the Common Areas which are the responsibility of the Association under the provisions of the Declaration;
- 5) The expenses of maintenance, operation, repair and replacement of other amenities and facilities serving the Subdivision. The maintenance, operation, repair and replacement of which the Board from time to time determines to be in the best interest of the Association;
- 6) The expenses of the Architectural Control Committee which are not defrayed by plan review charges;
- 7) Ad valorem real and personal property taxes assessed and levied against the Common Areas;
- 8) Such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including without limitation taxes and governmental charges not separately assessed against Lots; and

- 9) The establishment and maintenance of a reasonable reserve fund or funds (a) for maintenance, repair and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired or replaced on a periodic basis, (b) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (c) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

D) Special Assessments

In addition to the annual assessments authorized above, and as set forth in Section 8.6 of the Declaration, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any unbudgeted property taxes, any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for any other purpose set forth in the Declaration and By-laws of the Association. So long as the total amount of the special assessments allocable to all of the Lots in the Subdivision does not exceed One Hundred and No/100 (\$100.00) Dollars per Lot in any one fiscal year, the Board of the Association may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to the entire Subdivision to exceed this limitation shall be effective only if such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose special assessments shall be paid as determined by the Board of Directors, and the Board may permit special assessments to be paid in installments extending beyond the fiscal years in which the special assessment is imposed.

E) Individual Assessments

Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner shall be specially assessed against such Owners and their respective Lots. The individual assessments provided for in this Paragraph shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

F) Initial Assessment

The Association shall collect the Initial Assessment as set out in Article VIII of the Declaration according to the terms and conditions thereof .

- G) All sums assessed against any Lot pursuant to the Declaration, together with court costs, reasonable attorneys fees, and late charges as provided herein, shall be secured by an equitable charge and continuing lien on such Lot in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot except only for: (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first priority institutional Mortgage or on any Mortgage to the Declarants, or its affiliates, successors or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments to the lien of such mortgages shall only apply to such assessments, which have become due and payable prior to a foreclosure. All other person(s) acquiring liens or encumbrances on any Lot after the Declaration shall have been recorded shall be deemed to consent that such liens or

encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens and encumbrances.

H) Effect of Nonpayment: Remedies of the Association

Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. A lien and equitable charge as herein provided for each assessment shall be attached simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the annual assessment may be accelerated at the option of the Board and declared due and payable in full. The continuing lien and equitable charge of such assessment shall include all costs of collection (including reasonable attorneys fees and court costs) and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner shall remain personally liable for assessments and late charges which accrue prior to a sale, transfer or other conveyance of his Lot.

In the event that any Lot is to be sold at the time when payment of any Assessment against the Owner of such Lot to the Association shall be in default (whether or not a claim of lien has been recorded by the Association) then the proceeds of such purchase shall, after payment of those sums given priority by S.C. Code Ann. Section 27-31-200 (1976) be applied by the purchaser first to payment of any then delinquent assessment or installment thereof due to the Association before the payment of any proceeds of purchase to the owner who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of any Lot (other than deed in lieu of foreclosure as set forth above), the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments against Grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing to it.

I) Certificate

The Treasurer, any Assistant Treasurer or the manager of the Association shall, within ten (10) days of a written request, and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by the said Treasurer, Assistant Treasurer or manager of the Association setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, late charges and other penalty charges. Such

certificate shall be conclusive evidence against all but such Owner of payment of any assessments stated therein to have been paid.

J) Date of Common Assessments.

The annual assessments provided for herein shall commence as to each Lot as set forth the Declaration.

15. RULE MAKING

A) Rules and Regulations

Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots and the Common Areas and facilities located thereon, including without limitation the Recreational Amenities. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides and other chemicals. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, canceled or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by the Declarant, for so long as the Declarant owns any Lot or Lot primarily for the purpose of sale.

B) Enforcement

Subject to the provisions hereof, upon the violation of the Declaration, the By-laws or any rules and regulations duly adopted hereunder, including without limitation the failure to timely pay any assessments, the Board shall have the power: (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot, the Owners, occupants or guests of which are guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; or (iii) to suspend an Owner's right (and the right of such Owner's family, guests and tenants and of the co-Owners of such Owner and their respective families, guests and tenants) to use any of the Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests or tenants or by his Co-Owners or the family, guests or tenants of his Co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

C) Procedure

Except with respect to the failure to pay assessments, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other occupant of the Subdivision for violations of the Declaration, By-laws or any rules and regulations for the Association, unless and until the following procedure is followed:

- 1) Written demand to cease and desist from an alleged violation shall be served upon: the Owner responsible for such violation specifying:
 - (a) The alleged violation;
 - (b) The action required to abate the violation; and

- (c) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.
- 2) Within two (2) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:
- (a) The nature of the alleged violation;
 - (b) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
 - (c) An invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf; and
 - (d) The proposed sanction to be imposed.
- 3) The hearing shall be held in executive session of the board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or other individual who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

D) Enforcement

Each Owner shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to the declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the Declaration and in the deed or other instrument of conveyance to his Lot, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Declarant, the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Owner. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of the Declaration, the By-laws and the rules and regulation of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of the Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto as to the same violation or breach, or as to the enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whomsoever against the Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person under the provisions of the Declaration, the By-laws or any rules and regulations of the Association, however long continued.

16. DEFINITIONS.

All terms defined in the Declaration shall have the same meaning in these By-laws as in the Declaration.

17. CONFLICTS.

In the event of any conflict between the provisions of the Articles of Incorporation and these By-laws, the Articles shall control; and in the case of any conflict between the Declaration and the provisions of these By-laws, the provisions of the Declaration shall control.