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THIS DECLARATION CONTAINS A BINDING, IRREVOCABLE AGREEMENT TO ARBITRATE AND IS SUBJECT TO ARBITRATION PUSUANT TO TITLE 15, CHAPTER 48 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED.

See Article XIX for more information about this Arbitration provision.

**DECLARATION
OF
COVENANTS, CONDITIONS, EASEMENTS, CHARGES,
LIENS AND RESTRICTIONS
FOR
THE PINES AT GAHAGAN**

The Woody Law Firm
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THIS DEVELOPMENT IS AN AGE-RESTRICTED COMMUNITY (55 YEARS OF AGE AND OLDER).

See Article III for more information regard these age restrictions.

UPON THE INITIAL TRANSFER OF OWNERSHIP OF A UNIT TO THE INITIAL OWNER (OTHER THAN THE DECLARANT), AN AMOUNT EQUAL TO TWO (2) MONTHS OF THE ANNUAL REGULAR ASSESSMENTS FOR SUCH UNIT IN EFFECT AT THE TIME OF CLOSING ON THE UNIT SHALL BE PAYABLE BY THE NEW OWNER TO THE REGIME.

See Section 6.6.1 of this Declaration for more information regarding the Initial Working Capital Contribution.

UPON RESALE OF THE UNITS COVERED BY THIS MASTER DEED, THE SUBJECT ASSOCIATION SHALL COLLECT A CAPITAL CONTRIBUTION FEE IN THE AMOUNT ONE-HALF OF ONE (1/2%) PERCENT OF THE SALES PRICE OF THE UNIT.

See Section 6.6.2 of this Declaration for more information regarding the Capital Contribution Upon Resale.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, CHARGES, LIENS AND
RESTRICTIONS FOR THE PINES AT GAHAGAN

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, CHARGES, LIENS AND RESTRICTIONS FOR THE PINES AT GAHAGAN (hereinafter, the "Declaration") is entered into this 20th day of September, 2009 by DRMB, LLC, a South Carolina limited liability company (hereinafter, the "Declarant"), as the owner of all that certain real property located in the Town of Summerville, County of Charleston, State of South Carolina, more particularly described below.

RECITALS

WHEREAS Declarant is a South Carolina limited liability company, having its principal place of business located at 5081 Rivers Avenue, North Charleston, South Carolina 29406;

WHEREAS the Declarant is the Owner in fee simple of that certain real property located in the Town of Summerville, County of Charleston, State of South Carolina, described in detail in the attached Exhibit A (hereinafter, the "Property");

WHEREAS Declarant desires to create on the subject Property a residential community of single-family detached residential units to be known as the Pines at Gahagan;

WHEREAS Declarant also wishes to insure the integrity and attractiveness of the community, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the community and, to this end, Declarant desires to subject the Property to the coverage of the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the Property, as well as each Owner and occupant thereof; and

WHEREAS Declarant has, or will, incorporate The Pines at Gahagan Homeowners Association, Inc., as a non-profit South Carolina corporation for the purposes of exercising and performing the aforesaid functions.

SUBMISSION OF PROPERTY

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant, for itself and its successors and assigns, does hereby submit the Property more fully described in the attached Exhibit A, and all improvements located thereon, together with all easements, rights, and appurtenances thereunto belonging, to the covenants and restrictions set forth herein, and Declarant also hereby declares that the Property and all portions thereof shall be held, sold and conveyed subject to the terms of this Declaration, including all of the covenants, conditions, easements, charges, liens and restrictions, which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each Owner thereof.

ARTICLE I: DEFINITIONS

The following words, as well as other defined terms set forth herein, when used in this Declaration or any Amendment or Exhibit hereto, unless the context requires otherwise, shall be deemed to include the singular and plural forms as the context requires and shall have the following meanings:

Annual Assessment Period means the fiscal year of the Association established by the Association’s Board of Directors.

Architectural Review Board or ARB means that certain committee which may be appointed by the Association’s Board of Directors and charged with reviewing, approving, or rejecting the construction of any Residential Dwelling Unit or other improvement on any portion of the Property, as well as proposed changes to the improvements constructed on the Property when such changes are either on the exterior of the improvements or, as to windows, window treatments, and/or window display objects, visible from the exterior of such improvements, and such other functions as are described in this Declaration or authorized under the By-Laws of the Association.

Articles of Incorporation means the Articles of Incorporation of The Pines at Gahagan Homeowners Association, Inc., filed, or to be filed, with the Secretary of State of South Carolina, a copy of which is attached hereto as **Exhibit B**.

Assessment means the charges from time to time assessed against a Lot by the Association in the manner herein provided, and includes both Regular Assessments and Special Assessments.

Association means The Pines at Gahagan Homeowners Association, Inc., a South Carolina not-for-profit corporation created to manage the affairs of the community and to maintain the Common Property.

Board of Directors or Board means the Board of Directors of the Association. The Board of Directors shall be responsible for directing the operation of the Association.

By-laws means the By-laws adopted by the Association that govern the administration and operation of the Association, as amended from time to time, as set forth in **Exhibit C**, attached hereto.

Common Property shall mean and refer to that portion of the Property and improvements thereon, if any, to be owned and/or maintained by the Association for the common use and enjoyment of the Owners on a non-exclusive basis. The Common Property may include roadways within the Development and easements in favor of the Association. The designation of any portion of the Property as Common Property shall not mean that the public at large acquires any easement of use or enjoyment therein or thereon.

Co-Owner or Owner means any Person that owns a Lot.

Declarant means DRMB, LLC, a South Carolina limited liability company, which is the developer of this community. Declarant may assign its rights as Declarant, in whole or in part, by a written assignment signed by the Declarant and the assignee which is duly recorded in the RMC Office for Charleston County, South Carolina.

Declaration means this Declaration, including any Exhibits hereto, and all Amendments or Supplements approved in writing by the Declarant that have been recorded in the RMC Office for Charleston County, South Carolina.

Development means the real property subject to this Declaration and comprises the residential community known as The Pines at Gahagan. Additional real property may be subjected to the terms of this Declaration and made a part of the Development.

Development Instruments or Development Documents means this Declaration, the Articles of Incorporation, the By-laws, and any Rules and Regulations promulgated by the Association which pertain to the Property and the Development. Any exhibit, schedule, or certification accompanying a Condominium Instrument shall be deemed an integral part of that Condominium Instrument.

Director means a member of the Board of Directors for the Association.

Joint Owner means a Person that owns a Lot with any other individual or entity, the combination of which constitutes a single Lot Owner.

Lot means a parcel of real property depicted on a recorded subdivision plat of any portion of the Property and improved or intended for improvement with a Residential Dwelling Unit. A Lot shall not include any Common Property. For purposes of this Declaration and the Development Instruments, use of the word "Lot" shall be deemed to include any structure or Residential Dwelling Unit located or constructed thereon.

Majority of Co-Owners, Majority of Owners, Majority in Interest, or Majority means any percentage more than Fifty (50%) Percent of the Unit Owners.

Management Agent means any entity retained by the Association as an independent contractor to supervise the use, maintenance, and repair of the Common Property, or portions thereof, and/or to manage the business affairs of the Association.

Occupant means any Person occupying all or any portion of a Residential Dwelling Unit for any period of time, regardless of whether such Person is a tenant, the Owner of such property, or a Guest of either.

Person means an individual, firm, corporation, limited liability company, partnership, association, trust, or other legal entity.

Residential Dwelling Unit or Unit means those homes constructed, or to be constructed, on a Lot for use as residential dwelling quarters, as that purpose is defined throughout the Declaration.

Rules and Regulations means those standards that exist, if any, at the time of the recording of this Declaration, which govern the use, administration, and operation of the Property, and as set forth initially in Exhibit D, if any. Such initial Rules and Regulations may be amended or changed by the Board at any time. In addition, if no Rules and Regulations have been adopted at the time of the recording of this

Declaration, the Board reserves the right to adopt Rules and Regulations in the future, which shall be binding on the Owners. Rules and Regulations adopted or amended in the future need not be recorded as an Amendment to this Declaration in order to be effective.

ARTICLE II: THE PROPERTY AND DEVELOPMENT

2.1 GENERAL PROPERTY DESCRIPTION.

The Property, as described more particularly in the attached Exhibit A, is located in the Town of Summerville, County of Charleston, State of South Carolina. The Property is initially comprised of approximately 109 Lots and the Common Property of the Development. The Property also includes all easements of record, and is subject to the reservations to Declarant in this Declaration.

2.2 DESCRIPTION OF THE LOTS.

Each individual Lot shall be shown in detail on a plat delineating the dimensions of the Lot, which plat(s) shall be approved by the relevant governmental authority and properly recorded in the RMC Office for Charleston County. At the time of the recording of this Declaration, only a portion of the Property has been officially subdivided by plat to create individual Lots. When additional Lots are created by the recording of future plats, such Lots shall continue to be subject to the provisions of this Declaration.

2.3 DEVELOPMENT PLAN FOR THE PROJECT.

Declarant anticipates, subject to demand and market conditions, that a Residential Dwelling Unit shall be constructed on each Lot. In addition, in the future, Declarant may subject additional, adjacent real property to the Development by the execution and recordation of an Amendment to this Declaration. Such added real property shall conform with the terms of this Declaration.

2.4 LOT OWNERS' USE OF COMMON PROPERTY.

Subject to the provisions of this Declaration and Development Instruments, each Lot Owner shall have the non-exclusive right with that of other Lot Owners to use the Common Property in accordance with the purposes for which they are intended.

2.5 SUBDIVISION OF LOTS PROHIBITED.

Except as expressly permitted herein, no Owner shall subdivide any Lot or further subdivide any portion of the Property without the prior written consent of the Board.

2.6 COMBINATION OF LOTS.

Nothing contained in this Declaration or the Development Instruments shall be construed to prohibit the Owner of two (2) or more contiguous Lots from constructing a single Residential Dwelling Unit thereon, with the intention of having only one Residential Dwelling Unit on such Lots, subject to the approval of the Board and/or the ARB. Such Owner(s) shall pay the full Assessments for such

contiguous Lots and shall be entitled to vote for each Lot owned notwithstanding the combined use of such Lots.

2.7 RELOCATION OF LOT BOUNDARIES.

For so long as Declarant owns one or more Lots, boundaries between adjoining Lots may be relocated only with the prior written consent of the Declarant. The Declarant shall have the right to relocate boundaries between Lots owned by the Declarant or its affiliates as set forth herein without the approval of the Association, and the Declarant, without the need for further Owner approval, may execute any required Amendment to the Declaration on the Association's behalf pertaining thereto.

2.8 IMPROVEMENT OF LOTS.

No building or other improvement of any kind shall be constructed or placed upon any Lot without the written authorization of the ARB. In addition, no change, modification or addition shall be made to any building or structure erected on any Lot without the prior written approval of the ARB.

No more than one Residential Dwelling Unit may be constructed on any Lot. No portion of any building or other structure shall be located on or protrude into any area between any property line and the building setback line or buffer zone relating to such property line. No mobile home, modular or manufactured home, house trailer, outbuilding, or any other temporary structure shall be placed on any Lot either temporarily or permanently, except that a builder retained for construction services may utilize such structures during the construction process, subject to the Board's approval.

2.9 MINIMUM SQUARE FOOTAGE OF RESIDENTIAL DWELLING UNITS.

Residential Dwelling Units in the Development must contain a minimum of 1,100 square feet of heated living area.

2.10 PARKING SPACES ON LOTS.

Once a Residential Dwelling Unit is constructed on a Lot, the Lot must contain an accommodation for parking at least one vehicle. Owners or Occupants may not park vehicles on the streets in the Development except in the case of an emergency. Visitors and guests of Owners/Occupants may park their vehicles on the street for short durations so long as they do not impede the flow of traffic, block access to any Lot, create a safety hazard, or inconvenience any Owner or Occupant. No vehicle shall be parked in front of any fire hydrant, in front of the amenity center, on any undesignated portion of the Common Property, or on any undeveloped Lot. No motor homes may be parked in the Development. In addition, no unlicensed or inoperable vehicle shall be parked in any driveway, street, or any other portion of the Property. No area in the Development shall be used for vehicle repair work, whether performed by an Owner or someone else.

2.11 GENERAL MAINTENANCE RESPONSIBILITY OF OWNERS.

Except to the extent that the Association is responsible for maintenance of the Lots pursuant to the Development Instruments, each Owner shall be responsible for maintaining his or her Lot, at the Owner's expense, in a neat and attractive manner, and in good condition and repair, so as to insure that

the exterior appearance of the Lot and all improvements thereon is consistent with the standards of appearance and quality established by this Declaration and the ARB.

2.12 EASEMENTS APPURTENANT TO LOT OWNERSHIP.

All Unit Owners shall have, and are hereby granted, a perpetual right of ingress and egress for access to their Lot; subject, however, to any Rules and Regulations promulgated by the Association, which may reasonably limit or restrict Owners' access to their Lots. All Owners, by accepting title to a Unit, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such Property and acknowledge and agree that such access, ingress, and egress will be limited to roadways, sidewalks, and walkways located within the Development.

2.13 ENTRANCE GATE TO COMMUNITY.

The entrance gate to the Community shall be maintained by the Association. In the event any portion of the Property which is intended to comprise part of the Development is not made subject to these restrictions, the owners of such unrestricted property shall be responsible for paying their pro-rata share of the cost of maintaining the gate.

The presence of the gate at the entrance to the Community shall not be construed to imply that the Association or the Declarant have assumed responsibility for the security or safekeeping of any Owner's person or property. The entrance gate is intended to promote the private nature of the Community, but neither the Association nor the Declarant shall be deemed an insurer of any Owner's personal safety or property as a result of the presence and operation of the entrance gate.

ARTICLE III: AGE RESTRICTIONS

3.1 GENERAL AGE REQUIREMENT AND COMPLIANCE WITH FAIR HOUSING LAWS.

The Lots within the Development are intended for the construction of Residential Dwelling Units to house persons fifty-five (55) years of age or older, although younger persons are not restricted from occupying a Residential Dwelling Unit along with a person fifty-five (55) years of age or older, so long as such co-occupancy is in compliance with this Article. In addition, certain exceptions may be made pursuant to Section 3.2. The provisions of this Article are intended to be consistent with, and are set forth in order to comply with, the Fair Housing Act, 42 U.S.C. § 3601, *et. seq.*, and the South Carolina Fair Housing Act, S.C. Code § 31-21-10, *et. seq.*, as such laws are amended from time to time (hereinafter collectively referred to as the "Fair Housing Laws"), which are directed toward discrimination based on familial status. The Association, acting through the Board, shall have the authority to amend this Article without the consent of the Members of the Association or any other Person for the purpose of making the Declaration comply with the Fair Housing Laws, the regulations adopted pursuant thereto, and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this Article.

3.2 RESTRICTIONS ON OCCUPANCY.

- 3.2.1 Minimum Age Requirement. Each occupied Residential Dwelling Unit shall at all times have, as a permanent Occupant, at least one person who

is fifty-five (55) years of age or order (hereinafter, the "Qualifying Occupant"), except as follows:

- A. In the event of the death of a person who was the sole Qualifying Occupant of a Residential Dwelling Unit, or the illness or disability of the sole Qualifying Occupant requiring their transfer to a health care facility, nursing home, or assisting living, personal care, continuing care or similar facility providing assistance with daily personal needs and/or health care, the spouse of such Qualifying Occupancy and any other persons permitted to occupy the Residential Dwelling Unit under this Article may continue to occupy the Residential Dwelling Unit, provided that the provisions of the Fair Housing Laws and the regulations adopted thereunder are not violated by such occupancy.

- B. Any prospective purchaser/Owner of a Lot may request in writing that the Board make an exception to the requirements of this Section with respect to the Occupants or proposed Occupants of a Residential Dwelling Unit. The Board may adopt and publish rules and policies for considering and granting such requests, including policies regarding the form of such requests and the information that must be provided with such requests. The Board shall respond to any such request within seven (7) calendar days after receipt of the request and all information required to accompany such request, as specified by the Board's rules and policies. The Board may, but shall not be obligated, to grant exceptions under this subsection in its sole discretion, provided that the requirements for exemption from the Fair Housing Laws would still be met.

3.2.2 Limit on Occupancy of Persons Under 18 Years of Age. No Residential Dwelling Unit shall be occupied by any person under the age of eighteen (18), except that one person under the age of eighteen (18) may occupy a Residential Dwelling Unit if the Board reasonably determines that such occupancy is necessary to provide reasonable accommodation for the health care needs of the person's handicapped parent or grandparent who would be unable to continue to reside in the Residential Dwelling Unit without such person's care. For purposes of this Article, a Residential Dwelling Unit shall be deemed to be "occupied" by any person who stays overnight in the Residential Dwelling Unit more than forty-five (45) days, consecutive or nonconsecutive, in any twelve (12) month period, except that the Board may approve additional or longer overnight stays, not to exceed ninety (90) days in any twelve (12) month period, by grandchildren of a permanent Occupant if the Board determines, in its judgment, that the grandchildren's presence and behavior in the Development during the initial forty-five (45) days

permitted has not been disruptive or inconsistent with the retirement character of the Development.

3.2.3 No Age Restriction on Title Holders. Nothing in this Article is intended to restrict the ownership of or transfer of title to any Lot, however, no Owner may occupy the Residential Dwelling Unit unless the requirements of this Article are met, nor shall any Owner permit occupancy of a Residential Dwelling Unit in violation of this Article.

3.3 CHANGE IN OCCUPANCY; SALES AND LEASES.

Any lease or other occupancy agreement and any contract of sale relating to a Lot or Residential Dwelling Unit shall be in writing, shall be signed by the tenant or purchaser, and shall include a statement in conspicuous type that clearly discloses that the Residential Dwelling Units within the Development are intended for the housing of persons fifty-five (55) years of age or older, as set forth in this Article. Owners shall ensure that prospective tenants or purchasers are aware of the age restrictions set forth in this Declaration. In addition to other provisions required by the terms of this Declaration, every lease of a Residential Dwelling Unit shall provide that failure to comply with this Article shall constitute a default under the lease agreement.

In the event of any change in the occupancy of any Residential Dwelling Unit as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Lot shall immediately notify the Board in writing and provide to the Board the names and ages of all Occupants of the Residential Dwelling Unit immediately following such change in occupancy and such other information as the Board may reasonably require to verify the age of each Occupant. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Lot for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the Occupants continue to meet the requirements of this Article, in addition to all other remedies available to the Association under this Declaration and South Carolina law, which may include dispossession or eviction proceedings, if and to the extent authorized under South Carolina law.

Within thirty (30) days after the Qualifying Occupant of a Residential Dwelling Unit or any other Occupant granted an exemption pursuant to this Article, ceases to be a permanent Occupant of the Residential Dwelling Unit, the remaining Occupants shall vacate the Residential Dwelling Unit unless the Board has granted an exception for the remaining Occupants pursuant to this Article.

3.4 MONITORING COMPLIANCE; APPOINTMENT OF ATTORNEY-IN-FACT.

The Association shall maintain age records on all Occupants of Residential Dwelling Units. The Board shall adopt and publish policies, procedures and rules to monitor and maintain compliance with this Article, including policies regarding visitors, updating of agent records, the granting of exemptions pursuant to Article, and enforcement of these provisions. The Association shall periodically distribute such policies, procedures, and rules to Owners and make copies available to Owners, their tenants, and holders of security interests in any Lot upon reasonable request.

The Association shall have the power and authority to enforce this Article in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the Occupants of the Residential Dwelling Units, requiring copies of birth certificates or other proof of age for each Occupant of the Residential Dwelling Unit to be provided to the Board on a periodic basis, and taking action to evict the Occupants of any Residential Dwelling Unit which is not in compliance with the requirements and restrictions of this Article. Each Owner hereby appoints the Association its Attorney-in-Fact for the purpose of taking legal action to dispossess, evict, or otherwise remove the Occupants of his or her Residential Dwelling Unit as necessary to enforce compliance with this Article. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Unit that, in the judgment of the Board, are reasonably necessary to monitor compliance with this Article.

Each Owner shall be responsible for ensuring compliance with the requirements and restrictions of this Article and the rules of the Association adopted hereunder by itself and by its tenants and other Occupants of its Residential Dwelling Unit. Each Owner, by acceptance of title to a Lot or Residential Dwelling Unit, agrees to indemnify, defend, and hold the Association harmless from any and all claims, losses, damages, and causes of action that may arise from failure of such Owner's residential dwelling unit to so comply. In addition, the Association shall be entitled to recover all attorney's fees and costs actually incurred in enforcing this Article from the Owner of the Residential Dwelling Unit that is not in compliance, whether or not suit is filed.

ARTICLE IV: USE RESTRICTIONS

4.1 GENERAL USE REQUIREMENTS AND STANDARDS.

Each Owner shall be responsible for ensuring that the Owner's family, invitees, guests, tenants, employees and Occupants comply with all provisions of the Development Instruments. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights that the Association may have against the Owner's family, invitees, guests, tenants, employees or Occupants, as a result of such Person's violation of the Development Instruments, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, invitees, Guests, tenants, employees or Occupants. Whether the same is documented elsewhere or not, under any such circumstances, the affected Owner shall have and enjoy a right over for indemnification and/or contribution from and against the offending party. This right over shall not be deemed to diminish the liability of the Owner to the Association, and the Association shall also have all remedies available at law or in equity against the offending party jointly and severally with the Owner. Restrictions regarding the use of Lots and the Property generally are as follows, and additional restrictions may also be adopted by the Board in accordance with the terms hereof and as specified in the By-Laws.

4.2 RESIDENTIAL UNITS.

All Lots and Residential Dwelling Units shall be used for residential purposes and for ancillary home office uses only. A home office use shall be considered "ancillary" so long as: (A) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (B) the activity conforms to all zoning requirements for the Development; (C) the activity does not involve regular or unreasonable visitation of the Unit by clients, customers, suppliers, or other invitees, or door-

to-door solicitation of residents within the Development; (D) the activity does not increase traffic or include frequent deliveries within the Development other than deliveries by couriers, express mail carriers, parcel delivery services, and other such delivery services; (E) the activity is consistent with the primarily residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development, as may be determined in the sole discretion of the Board; and (F) the activity does not result in a materially greater use of Common Property, the Association amenities, the Association services or increase the premiums for any insurance maintained by the Association.

No other business, trade, or similar activity shall be conducted upon a Lot or in a Residential Dwelling Unit without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or a license is required.

The leasing of a Residential Dwelling Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or an agent of the Declarant, or a contractor or subcontractor approved by the Declarant, with respect to its development and sale of the Development or its use of any Lots or Residential Dwelling Units which it owns within the Development.

4.3 USE OF COMMON PROPERTY.

No Owner shall create any obstruction of or to the Common Property, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Property, except as expressly authorized by the Board.

If any portions of the Common Property are designated for such use, with the prior written approval of the Board, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board for certain social gatherings or for other approved uses. Any such Owner or Owners who reserve a portion of the Common Property, as provided herein, shall assume, on behalf of himself and his guests, Occupants, family, and other invitees, all risks associated with the use of the Common Property and all liability for any damage or injury to any Person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents, or employees.

4.4 PROHIBITION AGAINST DAMAGE, NUISANCE, AND NOISE.

Without the prior written consent of the Board, nothing shall be done or kept on the Property, or any part thereof, which would increase the rate of insurance for the Association or which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive, or offensive activity shall not be carried on or upon any portion of the Property. No Owner or Occupant of a Lot or Residential Dwelling Unit may use or allow the use of such Owner's property or any portion of the Development at any time, in any way or for any purpose which may endanger the health or unreasonably annoy or disturb or cause embarrassment, discomfort, or nuisance to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. Notwithstanding anything to the contrary herein, no Owner or Occupant may use or allow the use of a Lot, Residential Dwelling Unit, the Common Property, or any portion of the Property in any manner which creates noises between the hours of 10:00 p.m. and 7:30 a.m. which can be heard by other neighbors 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 Owner or Occupant shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Development or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the Association. No damage to or waste of the Common Property, or any part thereof, or of the exterior of any building shall be permitted by any Owner or member of his or her family or any invitee or Guest of any Owner. Each Owner shall indemnify, defend and hold the Association and the other Owners harmless against all loss to the Association and other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, Guests, invitees, or Occupants of his or her Lot or Residential Dwelling Unit.

4.5 FIREARMS AND FIREWORKS.

The display or discharge of firearms or fireworks on any portion of the Property is prohibited; provided, however, that the display of lawful firearms on the Common Property is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Residential Dwelling Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

4.6 PETS.

No Owner or Occupant of a Residential Dwelling Unit may keep more than a reasonable number of pets, as determined by the Association's Rules and Regulations and any laws or ordinances in place at any given time. In the event of conflict between the guidelines contained in the prevailing laws or ordinances and the Association's Rules and Regulations, the most restrictive guidelines shall apply. No Owner or Occupant may keep, breed, or maintain any pet for any commercial purpose. Dogs, cats, and other pets must be kept on a leash and be under the physical control of a responsible Person at all times while not confined to the Owner's Lot. The owner of the pet or the Person responsible for the pet must promptly remove any feces left upon the Common Property by pets.

4.7 ABANDONED PERSONAL PROPERTY.

Abandoned or discarded personal property, other than an automobile, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of

the Common Property without the prior written permission of the Board. If the Board or its designee, in its sole discretion, determines that property is being kept, stored, or allowed to remain on the Common Property in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine.

Prior to taking any such action, the Board shall place a notice on the personal property and/or on the front door of the Residential Dwelling Unit of the Owner of such property, if known, specifying the nature of the violation and stating that after two (2) days the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the Person or entity which will remove the property, and the name and telephone number of a Person to contact regarding the alleged violation.

If the violation continues two (2) days after such notice is placed on the personal property or on the front door of the subject Unit or reoccurs within six (6) months of such notice, then the personal property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property.

Notwithstanding anything to the contrary, the Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this Section may, without prior notice to the owner or user of the personal property, be removed and either discarded or stored by the Board in a location in which the Board may determine; provided, however, that the Board shall give to the owner, if known, notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

If personal property is removed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity or subsequent disposition thereof. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property as set forth herein, or in addition to the exercise of such authority.

4.8 SIGNAGE.

Declarant and/or Apex Real Estate may place a "for sale" sign on any Lot with a newly constructed Residential Dwelling Unit located thereon. No other signage advertising homes or Lots for sale or lease shall be permitted. Declarant or its agents (including general contractors or subcontractors permitted by Declarant) shall be permitted to post city or county construction permits during the construction or renovation of a Residential Dwelling Unit. The Association shall not prohibit signs endorsing political candidates for governmental elections.

No billboards, advertising signs, or other signage of any character shall be erected, placed, permitted, or maintained on any Lot or improvement thereon except as herein expressly permitted. This prohibition includes the placing of any signage in the window of a Residential Dwelling Unit, where such signage could be read from the street.

4.9 RUBBISH, TRASH, AND GARBAGE.

All rubbish, trash, and garbage shall be regularly removed from the Lots Residential Dwelling Units and shall not be allowed to accumulate thereon or therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in closed plastic bags and placed in proper receptacles designated by the Board for collection or shall be removed from the Property. Garbage to be recycled shall be disposed of as instructed by the Association.

4.10 IMPAIRMENT OF PROPERTY AND EASEMENTS.

An Owner shall not directly or indirectly engage in any activities or work that will impair the structural soundness or integrity of another Residential Dwelling Unit, the Common Property, or impair any easement or other interest in real property, nor shall an Owner engage in any activities or allow any condition to exist which will adversely affect any other Owner's property or the Common Property.

4.11 UNSIGHTLY OR UNKEMPT CONDITIONS.

The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any portion of the Property. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside any Residential Dwelling Unit.

4.12 GARAGE SALES.

Garage sales, yard sales, flea markets, or similar activities are prohibited unless and to the extent conducted under the auspices of the Association.

4.13 ANTENNAE AND SATELLITE EQUIPMENT.

All electrical service and telephone lines shall be placed underground and no outside electrical line shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna or satellite dish shall be erected, placed, or maintained on any part of the premises without the written permission of the Board. Satellite dishes exceeding 18.5 inches in diameter shall be prohibited unless the manner and location of placement approved by the ARB. However, normal service pedestals or housings used in conjunction with the underground utilities shall be permitted within the development and overhead utilities shall be permitted during the construction period until utility companies can place them underground. Notwithstanding the terms of this Section, all overhead utility lines installed prior to the execution of this Declaration shall be permitted to remain.

4.14 TIME SHARING PROHIBITED.

Notwithstanding anything herein to the contrary, no Lot, Residential Dwelling Unit or any other portion of the Property shall be used for or subject to any type of Vacation Time Sharing Ownership Plan, Vacation Time Sharing Lease Plan, or Vacation Time Sharing Plan, as defined by the South Carolina Code of Laws, Section 27-32-10, *et seq.*, as amended, or any subsequent laws of the State of South Carolina dealing with a vacation time share ownership or leasing plan, unless the Owner of said Unit has obtained the prior written approval of the Board and, for so long as the Declarant owns a Lot, the prior written consent of the Declarant.

4.15 LEASING OF RESIDENTIAL DWELLING UNITS.

In order to preserve the character of The Pines at Gahagan as a residential community of predominantly Owner-occupied homes and to facilitate the financing of Residential Dwelling Unit purchases by maintaining the Development as one which is substantially Owner-occupied, the leasing of a Residential Dwelling Unit shall be prohibited except in strict compliance with this Section. The Board shall have the power to make and enforce reasonable Rules and Regulations and to collect fines, in accordance with the Declaration and By-Laws, in order to enforce the provisions of this Article. The leasing of Residential Dwelling Units shall be governed by the following provisions.

- 4.15.1 Leasing Approval. All leasing shall be subject to prior written approval of the Board. The Board shall not approve the proposed lease of a Residential Dwelling Unit if such lease would result in more than three (3%) percent of the total number of the Residential Dwelling Units in the Development being subject to a lease. This limitation, however, shall not apply to the following: (A) the leasing of a Residential Dwelling Unit by the holder of a mortgagee who becomes the Owner of a Lot pursuant to foreclosure of its mortgage or by deed in lieu of foreclosure, or other similar methods for acquisition of title; and/pr (B) the leasing of a Residential Dwelling Unit by an Owner to whom the Board has granted a hardship exception to the general prohibition against leasing, in the sole discretion of the Board.
- 4.15.2 Lease Agreements for Units. All lease or rental agreements regarding Residential Dwelling Units must be for an initial term of no less than one year. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may (but shall not be obligated to) maintain and, upon request, provide a form which is deemed acceptable for leasing of any Residential Dwelling Unit. Within seven (7) days after executing a lease agreement for the lease of a Residential Dwelling Unit, the Unit Owner shall provide the Board of Directors with a copy of the lease agreement with the name of and contact information for the tenant and all other people occupying the Residential Dwelling Unit. The Owner must make available to the tenant copies of the Declaration, By-Laws, and the Rules and Regulations, if any. The Board may require that no adult Person be allowed to occupy any Residential Dwelling Unit subject to a lease unless they are signatory to and obligated by the lease (which Lease shall be subject to the Development Instruments as set forth in this Section).
- 4.15.3 Prohibition against Subleasing. There shall be no subleasing of Residential Dwelling Units or assignment of leases unless prior written approval is obtained from the Board.
- 4.15.4 Tenants' Compliance with Declaration, By-Laws, and Rules and Regulations; Use of Common Property; Liability for Assessments. Any lease of a Residential Dwelling Unit shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each tenant, by occupancy of a

Residential Dwelling Unit, covenants and agrees that any lease shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease agreement by existence of this covenant on the Lots:

Compliance With Declaration, By-Laws, and Rules and Regulations. The Tenant shall comply with all provisions of the Declaration, By-Laws, and Rules and Regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the subject Residential Dwelling Unit in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Residential Dwelling Unit to comply with the Declaration, By-Laws, and the Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and Rules and Regulations adopted pursuant thereto. In the event that the Tenant, or a Person living with or visiting the Tenant, violates the Declaration, By-Laws, or a Rule or Regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the Tenant, and such fine shall be assessed against the Tenant in accordance with the By-Laws. If the fine is not paid by the Tenant within the time period set by the Board, the Board may assess the fine against the Owner and the Owner shall pay the fine upon notice from the Association of the Tenant's failure to pay the fine. Unpaid fines shall constitute a lien against the Residential Dwelling Unit.

Any violation of the Declaration, By-Laws, or Rules and Regulations adopted pursuant thereto by the Tenant, any Occupant, or any Person living with the Tenant, is deemed to be a default under the terms of the Lease and authorizes the Owner to terminate the Lease without liability and to evict the Tenant in accordance with South Carolina law. The Owner hereby delegates and assigns to The Pines at Gahagan Homeowners Association, Inc., acting through the Board, the

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*Declaration of Covenants, Conditions, Easements,
Charges, Liens and Restrictions
for
The Pines at Gahagan*

power and authority of enforcement against the Tenant for breaches resulting from the violation of the Declaration, By-Laws, and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the Tenant as attorney-in-fact on behalf and for the benefit of the Owner in accordance with the terms hereof. In the event The Pines at Gahagan Homeowners Association, Inc. proceeds to evict the Tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be an Assessment and lien against the Residential Dwelling Unit.

Use of Common Property. Except where the Owner also occupies the Residential Dwelling Unit, the Owner transfers and assigns to the Tenant, for the term of the Lease, any and all rights and privileges that the Owner has to use the Common Property of the Development, including, but not limited to, the use of all recreational facilities, if any.

Liability for Assessments. When an Owner who is leasing his or her Residential Dwelling Unit fails to pay any Annual, Special, or Specific Assessment or any other Association charge or fee for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the Tenant during the period of delinquency, and, upon request by the Board, Tenant shall pay to the Association all unpaid Annual, Special, and Specific Assessments and other Association charges or fees payable during and prior to the term of the Lease and any other period of occupancy by the Tenant. However, Tenant need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by Tenant shall reduce, by the same amount, Tenant's obligation to make monthly rental payments to the Owner. If Tenant fails to comply with the Board's request to pay Assessments or other charges or fees, Tenant shall pay to the Association all amounts

authorized under this Declaration as if Tenant were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

4.16 AMENITIES.

Declarant has proposed the construction and operation of the following amenities: a swimming pool and a clubhouse (hereinafter, the "Amenities," which, for the purposes of this Declaration, shall include any additional facilities installed or created for the benefit of the Owners, which are not contemplated herein). With regard to these amenities, only Owners and such Owners' occupants, guests, and tenants specifically permitted by the Association shall have the right to use any of the Amenities. The Owners of lots or property adjacent to the Property which has not been subjected to this Declaration shall not have the right to access the Amenities. This includes any property located within the Entrance Gate but not subject to this Declaration and not subject to the obligations to pay Assessments hereunder (if any).

The Declarant hereby reserves the right to retain the exclusive use of four (4) rooms within the clubhouse to be utilized for administrative services related to real estate sales, construction management, Association administration, or such other uses as Declarant deems appropriate, in its sole discretion. Declarant shall have the right to select which four (4) rooms shall be utilized for these administrative purposes, and Declarant's right to occupy these four (4) rooms shall continue until the last Lot in the Project is sold to an Owner other than Declarant, or one of Declarant's affiliates.

4.17 ARCHITECTURAL CONTROL.

Use of the Property and the Lots, specifically, shall be subject to the provisions of Article VIII hereof concerning architectural control of the Development.

4.18 GARDENING EQUIPMENT.

Garden hoses and other gardening or landscaping equipment or tools shall be stored in an inconspicuous manner.

4.19 PROHIBITION AGAINST OUTDOOR FIRES.

No burning of leaves or trash outside of fireplaces or receptacles specifically designed for burning (and approved by the Board in writing) shall be permitted.

4.20 NO OBSTRUCTIONS.

No fences, walls, hedges, shrubs, trees or other vegetation shall be allowed to obstruct the view of traffic at any driveway, road, or any intersection of any road within the Development. Trees and shrubs located near intersections shall be trimmed and maintained so that the branches and foliage do not obstruct the view of traffic.

4.21 USE AND PARKING OF VEHICLES.

The provisions of Section 2.10 shall govern the use of vehicles and the parking of vehicles in the Development.

4.22 BOAT STORAGE.

All boats and equipment utilized with boats, including boat trailers, shall be kept under suitable cover so as to screen such items from view, such as a garage or carport.

4.23 GARAGE DOORS.

All garage doors must be kept closed except when in use for moving vehicles and other items to and from the garage or when working in the garage or yard; provided, however, that during the summer, garage doors may be left open a maximum of ten (10) inches for ventilation purposes.

4.24 EXTERIOR DECORATIONS AND ORNAMENTATION.

When visible from the street, yard ornaments and objects must be tasteful and limited in number, as determined by the Board, in its sole discretion. A reasonable number of appropriate outdoor seasonal or holiday decorations, as determined by the Board, may be allowed on the exterior of Residential Dwelling Units.

4.25 BOUNDARY FENCES.

Declarant hereby reserves the right to install a wall or Boundary Fence along the boundary line between the Property and property now or formerly owned by Crossroads Community Church, identified as Tract 4A (TMS No. 379-00-00-067), and property now or formerly owned by the Town of Summerville, identified as Tract 7 (TMS No. 379-00-00-063 (Charleston) & 137-00-00-014 (Dorchester)), both tracts as shown on that certain plat entitled "BOUNDARY SURVEY SHOWING A PROPERTY LINE ADJUSTMENT BETWEEN TMS 137-00-00-014, OWNED BY THE TOWN OF SUMMERVILLE LOCATED IN THE TOWN OF SUMMERVILLE AND TMS 379-00-00-066, OWNED BY THE PINES AT GAHAGAN, LLC LOCATED NEAR THE TOWN OF SUMMERVILLE" prepared by Paul C. Lawson, Jr., SCRLS No. 1491 of Ashley Land Surveying, Inc., dated November 21, 2005 and recorded in the RMC Office for Charleston County in Plat Book EK, at Page 948. Such Boundary Fences shall be of a size as determined by Declarant, in its sole discretion and the materials used shall be selected by Declarant. The Boundary Fence shall be constructed at the rear of the Lots located along this common property line between the Property and Tract 4A and Tract 7, as described above. In the event the Boundary Fence is constructed on the Lots or on the property of an Owner, Declarant (and/or the Association, as applicable) shall be deemed to have an easement for the placement of the Boundary Fence at the site selected by Declarant. No Owner of any Lot shall have any right to modify or remove the Boundary Fence. The Association shall be responsible for maintaining the Boundary Fence, and shall be deemed to have an access easement onto the Lots for such purpose.

Declarant also hereby reserves the right to install a wall or Boundary Fence along the boundary line between the Property and property now or formerly owned by Shawn C. Olmstead and Cindy Cox, identified as Tract 2 (TMS No. 379-00-00-074), and property now or formerly known as Hillcrest Cemetery

(TMS No. 379-00-00-046), and property now or formerly owned by Robert O. Collins Company, identified as Tract 2 (TMS No. 379-00-00-047), all of these tracts as shown on that certain plat entitled "BOUNDARY SURVEY SHOWING A PROPERTY LINE ADJUSTMENT BETWEEN TMS 137-00-00-014, OWNED BY THE TOWN OF SUMMERVILLE LOCATED IN THE TOWN OF SUMMERVILLE AND TMS 379-00-00-066, OWNED BY THE PINES AT GAHAGAN, LLC LOCATED NEAR THE TOWN OF SUMMERVILLE" prepared by Paul C. Lawson, Jr., SCRLS No. 1491 of Ashley Land Surveying, Inc., dated November 21, 2005 and recorded in the RMC Office for Charleston County in Plat Book EK, at Page 948. Such Boundary Fences shall be of a size as determined by Declarant, in its sole discretion and the materials used shall be selected by Declarant. The Boundary Fence shall be constructed at the rear of the Lots located along this common property line between the Property and Tract 2, Hillcrest Cemetery, and Tract 2, as described above. In the event the Boundary Fence is constructed on the Lots or on the property of an Owner, Declarant (and/or the Association, as applicable) shall be deemed to have an easement for the placement of the Boundary Fence at the site selected by Declarant. No Owner of any Lot shall have any right to modify or remove the Boundary Fence. The Association shall be responsible for maintaining the Boundary Fence, and shall be deemed to have an access easement onto the Lots for such purpose.

ARTICLE V: THE PINES AT GAHAGAN HOMEOWNERS ASSOCIATION, INC.

5.1 COMPULSORY NATURE OF MEMBERSHIP.

EVERY OWNER OF A LOT OR RESIDENTIAL DWELLING UNIT SHALL AUTOMATICALLY BECOME A MEMBER OF THE ASSOCIATION UPON ACQUISITION OF TITLE TO SUCH PROPERTY. MEMBERSHIP SHALL BE APPURTENANT TO OWNERSHIP OF A LOT AND MAY NOT BE SEPARATED THEREFROM.

THE OWNER OF EACH UNIT SHALL AUTOMATICALLY BECOME A MEMBER OF THE ASSOCIATION UPON ACQUIRING AN OWNERSHIP INTEREST IN A UNIT. MEMBERSHIP IN THE ASSOCIATION SHALL BE APPURTENANT TO AND NOT SEVERABLE FROM OWNERSHIP OF A UNIT. The Membership of an Owner shall terminate automatically upon conveyance of title to the interest in a Unit previously owned by such Owner, regardless of the means by which such conveyance of title occurs.

There shall be only one membership in the Association per Lot. If title to a Lot is held in the name of more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth herein and elsewhere in the Development Instruments. Such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

No Person holding any lien, mortgage, or other encumbrance upon any Unit shall be entitled, solely by virtue of such lien, mortgage, or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Regime, the Association shall have authority and power to enforce the provisions of this Declaration, levy and collect Assessments in the manner hereinafter provided, and adopt, promulgate, and enforce Rules and Regulations governing the use of the Lots and the Common Property, as the Association may be deemed necessary in the pursuit of the best interests of the Development.

5.2 PURPOSE OF ASSOCIATION.

In order to provide for the effective administration of the Development by the Owners, the Association has been, or will be, formed, by the filing of the Articles of Incorporation with the South Carolina Secretary of State. A copy of such Articles of Incorporation is attached as **Exhibit D**. The Association, through its Board of Directors, shall operate and manage the Development and undertake and perform all acts and duties incident thereto in accordance with the provisions of this Declaration and the By-laws of the Association, as well as the Rules and Regulations promulgated by the Association from time to time. The Board of Directors of the Association shall have authority to take all actions on behalf of the Association that do not require, by law, this Declaration, or the By-laws, the vote of a Majority of Owners, and the decision of the Board of Directors shall be binding upon the Association and its Owners. A copy of the initial By-laws is set forth in **Exhibit E**, attached hereto.

The Association is hereby vested with the rights, powers, privileges, and duties necessary or incidental to the proper administration of the Development, including the care, upkeep, surveillance, and insurance of the General Common Property, such rights, power, privileges, and duties being more particularly set forth in its Articles of Incorporation and the By-Laws of the Association. The Association shall also be empowered to exercise any of the rights, powers, privileges, or duties which may, from time to time, be established by law or which may be delegated to it by the Unit Owners. The Association has the right to grant permits, licenses, and easements for access to and over the Common Property of the Property for utilities, roads, and other purposes reasonably necessary for the proper maintenance and operation of the Regime.

In addition to the responsibilities and rights of the Association set forth in this Declaration, the Board shall have the discretion to determine and modify, from time to time, the functions and services to be carried out or offered by the Association, and the level of service to be provided, taking into consideration the funds available, liability concerns, and other factors which the Board deems relevant.

5.3 ASSOCIATION'S RIGHT TO ENFORCE COMPLIANCE WITH DEVELOPMENT INSTRUMENTS.

The Association shall have a right of action against any Owner to enforce compliance with the By-laws and with the administrative Rules and Regulations adopted pursuant thereto and with the covenants, conditions, and restrictions contained in this Declaration. Such action may be initiated at law or in equity to compel compliance, restrain violations, or to recover damages, if applicable. In addition, the Board may impose sanctions for such violations. The failure of the Board to enforce any right, reservation, obligation, restriction, or condition contained herein, for any period of time, shall not be deemed a waiver of the right to do so thereafter.

After written notice and an opportunity for a hearing in accordance with the Development Instruments, the Board may, without liability to any Person:

- A. Impose reasonable monetary fines, which shall constitute a lien upon the violator's Lot. In the event that any Occupant, guest, or invitee of a Lot violates the Development Instruments and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the

violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

- B. Suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than sixty (60) days delinquent in paying any Regular or Special Assessment);
- C. Suspend any Person's right to use any recreational facilities, including the clubhouse, within the Common Property (1) for any period during which any charge against such Owner's Lot remains delinquent, and (2) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than sixty (60) days delinquent in paying an Assessment or other charge owed to the Association); however nothing herein shall authority the Board to limit ingress or egress to or form any Lot;
- D. Suspend services the Association provides (except that no notice or hearing is required if the Owner is more than sixty (60) days delinquent in paying any Assessment or other charge owed to the Association);
- E. Exercise self-help or take action to abate any violation of the Development Instruments in a non-emergency situation (including removing personal property that violates the Development Instruments); and
- F. Levy Special Assessments;
- G. Record a notice of violation with respect to any Lot on which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within twelve (12) months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity to be heard.

The Board may take the following actions to obtain compliance with any provision(s) of the Development Instruments without prior notice or a hearing and without liability to any Person:

- A. Exercise self-help or take action to abate a violation in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other Persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);
- B. Exercise self-help or take action to abate a violation on the Common Property under any circumstances;
- C. Require an Owner, at the Owner's expense, to perform maintenance or to remove any structure or improvement on such Owner's property that is in violation of

the requirements under the Development Instruments and to restore the property to its previous conditions;

- D. Enter the Property and exercise self-help to remove or cure a violating condition if an Owner fails to take action as required pursuant to subsection (C) above within ten (10) days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or
- E. Bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

5.3 CLASSES OF MEMBERSHIP.

The Association shall have the following three (3) classes of membership:

Class A Members: Class A Members shall be all Owners, with the exception of Declarant, and all Class A Members shall be entitled to one (1) vote for each Lot owned, except as otherwise provided for herein. When more than one person holds an interest in any Lot, despite the number of Owners, all Owners together shall collectively have only one (1) vote among themselves. In the event multiple Owners hold title to a single Lot, it shall be the responsibility of those Owners to provide the Association with written notification, with the signatures of all those persons owning an interest in the Lot, of the name and mailing address of one (1) individual authorized to receive notification from the Association and to cast the single vote corresponding to that Lot. If more than one co-Owner attempts to cast the vote for such Lot, the votes for such Lot shall be disregarded. Class A Membership shall be mandatory for all Owners except the Declarant and may not be separated from ownership of any Lot.

Class B Members: The Class B Member shall be the Declarant, and the Class B Member shall be entitled to cast the greater of eight (8) votes for each Lot owned or one more vote than the total votes of the Class A Members. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following events: (A) At the option of the Declarant, as evidenced by a recorded notice executed by Declarant; or (B) When Residential Dwelling Units have been constructed on one hundred (100%) percent of the Lots in the Development and have been conveyed to Owners other than Declarant or its affiliates. In addition to any and all rights granted to it in this Declaration, the Class B Member shall enjoy all of the rights granted to the Class C Member upon termination of the Class B Membership, prior to the termination of the Class B Membership.

Until the Class B Members are converted to Class A Members, Declarant shall be entitled to appoint all members of the Board of Directors, and the Association need not hold a meeting to elect directors until conversion of the Class B Members.

Class C Members: The Class C Member shall be the Declarant, upon termination of the Class B Membership, as set forth above. The Class C Member shall have no voting rights and no assessment obligations. The Class C Member shall enjoy certain limited rights under this Declaration and the other Development Instruments, including without limitation, the right to: (A) Obtain access to, and electronic and/or paper copies of, the Association's books and records, including financial and membership data; and (B) Call Special Meetings of the Association on any topic or issue it sees fit in its

sole discretion, although the Class C Member would not be entitled to vote at said meeting. Class C Membership shall terminate at the voluntary discretion of Declarant, although there is no requirement that this membership class be terminated.

5.4 ELECTIONS AND VOTING PROCEDURES.

Votes may be cast in person or by written proxy at all meetings of the Association. The holder of a proxy need not be an Owner. Unless a different number is specified in this Declaration or in the By-laws, all actions requiring a vote of the Owners shall require approval of a Majority in Interest. Each Owner must cast his entire vote on each matter to be voted on by the Owners. If multiple Owners of a single Lot cannot agree on how the vote for that Unit is to be cast, that vote will not be cast or counted for any purpose other than the calculation of the total votes for the entire Development. Further details regarding voting shall be set forth in the By-laws.

Notwithstanding the foregoing, a Majority of the Board of Directors is hereby irrevocably appointed as agent and attorney-in-fact for the Unit Owners to vote their interest at all meetings of the Association, unless such Owner is present or has filed a proxy as set forth in the By-Laws of the Association.

When voting for election of Directors, the vote for a particular Lot shall be multiplied by the number of positions to be filled by such election and the resulting total number of votes for that Lot may be cast for a single candidate or may be split among multiple candidates as the Owner(s) of such Lot determine appropriate. On any matter other than election of Directors, there shall be no splitting of votes.

5.5 BOARD OF DIRECTORS.

The affairs of the Association shall be governed by its Board of Directors, which shall have the authority to act on behalf of the Association in all matters except where the Development Instruments or South Carolina law specifically require a vote of the Members. So long as Declarant retains its Class B Membership, Declarant shall have sole authority to appoint and remove the Board of Directors. Thereafter, the Board shall be elected by the Members in accordance with the By-Laws. Declarant shall have the powers and duties of the Board until it appoints a Board.

The powers, duties, and obligations of the Board shall include the following:

- A. Adopt and publish Rules and Regulations governing the use, repair, maintenance, design, and replacement of the Common Property, if any, and any improvements which may be constructed thereon. Such Rules and Regulations may address the personal conduct of the Owners and their Tenants, invitees, employees, and guests on the Property and to establish penalties for the infraction thereof;
- B. Enforce use restrictions, provisions of the Declaration and By-Laws, and Rules and Regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges. These powers, however, shall not be construed as limiting any other means of enforcing the use restrictions or Rules and

Regulations of the Association. Any fines imposed in accordance with this Section shall be considered an Assessment against the Owner's Lot and may be collected in the manner provided for collection of other Assessments;

- C. Administer, manage, repair, and maintain the Common Property, if any; provided, however, that if the Board of Directors does not repair or maintain the Common Property, the Declarant shall have the right (but not the obligation) to do so at the expense of the Association;
- D. Exercise for the Association all powers provided in the By-Laws, as amended from time to time, including without limitation, the power to suspend the voting rights of an Owner during any period in which such Owner is 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 ninety (90) days for infraction of any published Rules and Regulations of the Association, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days thereafter;
- E. Exercise for the Association all powers, duties, and authority vested in or delegated to the Board of Directors and not reserved to the membership or Declarant by other provisions of the of the Development Instruments;
- F. Grant permits, licenses, and easements over the Common Property for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; and
- G. To the extent allowed by law, the Board shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association, which loans shall be used by the Association in performing its authorized functions. Notwithstanding anything herein to the contrary, the Association shall not be allowed to reduce the amount of the annual assessment at any time there are any such loans with an outstanding balance due.

5.6 EMPLOYEES, MANAGEMENT, AND MANAGEMENT AGENT/OPERATING COMPANY.

The Board of Directors may employ and dismiss Persons on behalf of the Association and/or select one or more Management Agents or Operating Companies, each of which shall have such authority and shall receive such compensation as is set forth in writing and approved by the Board of Directors. The Declarant or an affiliate of Declarant may serve as Management Agent. A copy of any management or operating agreement between the Association and the Management Agent shall be provided to any Owner upon written request to the Board of Directors; provided, however, that the Association may charge a reasonable fee for any expenses of reproduction, postage, or personnel incurred. No management or operating agreement shall be for a term longer than three (3) years; provided, however, that a management or operating agreement may provide for automatic extension for additional terms of

not longer than the initial term unless either party notifies the other party within a defined period prior to the expiration of the existing term that it wishes to terminate the agreement or renegotiate the agreement.

In the event that a contract or agreement with a Management Agent or Operating Company is in place at the time of the transfer of control of the Board from the Declarant to the Members, the Members shall have the right to terminate such contract or agreement upon ninety (90) days' written notice to the Management Agent or Operating Company. Declarant shall ensure that any such contracts entered into prior to such transfer contain language to this effect.

5.7 ASSOCIATION'S RESPONSIBILITY FOR MAINTENANCE AND LANDSCAPING.

5.7.1 Maintenance and Landscaping of Common Property. The Association shall be responsible for the following with regard to the Common Property: (A) installing an entry sign for the Development and maintaining the same; (B) maintaining the landscaping in any areas of Common Property; (C) maintaining private roads, walkways, sidewalks, trails, biking paths, and medians within the Development; (D) maintaining and operating any lighting installed along roads or other Common Property; and (E) maintaining recreational and social facilities.

5.7.2 Landscaping of Lots. The Association shall be responsible for the maintenance of landscaping on all Lots, including the entire area of unimproved Lots and excluding any areas where access is prohibited by enclosures and/or allowed and non-allowable pets. The Association shall have no responsibility for maintenance of any special landscaping which the Owner voluntarily installs on any Lot. Maintenance of landscaping shall include bi-monthly lawn care during the months of April through October, inclusive, monthly lawn care during the months of November through March, inclusive, semi-annual pruning of vegetation and semi-annual distribution of pine straw. Owners may choose to perform some of the landscaping of their own Lots, subject to approve of the Association; however, in such event the Owner shall not be entitled to any reduction in the Assessments due for such Owner's Lot. The Association shall have no responsibility for maintenance or operation of irrigation equipment on any portion of the Property or on the Lots, except that the Board shall have the authority to maintain, operate, and control any irrigation system that serves more than one Lot and to assess all costs which the Association incurs, including utility costs, to the Owners of each Lot served by the shared irrigation systems as a Special Assessment.

5.7.3 Exterior Maintenance of Residential Dwelling Units. The Association shall be responsible for annual power washing and painting of only the wooden trim of the main Residential Dwelling Unit. Except as eth forth herein, the Association shall have no responsibility for maintenance, repair, or replacement of exterior siding or exterior building surfaces, roofs, screens, interior of porches, windows, heating and air conditioning units, glass surfaces, decks, fencing, patios or gutters, all of which shall be the sole responsibility of the Owner.

5.7 INDEMNIFICATION.

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The Declarant, Board of Directors, officers of the Association, and such employees of the Association and/or the Management Agent as the Board of Directors shall specify by written resolution from time to time (collectively referred to in this Article as the "non-Liable Persons"), shall not be liable to the Owners or the 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 or fraud by such Person(s). The Association shall indemnify and hold harmless such Non-Liable Person(s) against all liabilities to others arising out of any agreement made by such Non-Liable Person(s) on behalf of the Association, unless such agreement was made in bad faith, was the result of gross negligence or fraud by such Non-Liable Person(s), or was in clear violation of a contractual obligation of such Non-Liable Person(s) to the Association. Notwithstanding the foregoing, the Association and a Management Agent or Operating Company may agree to impose a greater degree of liability on such Management Agent or Operating Company.

5.8 BOOKS AND RECORDS.

The Association shall keep full and accurate books of accounts and financial records showing all receipts and disbursements. In particular, the books shall be maintained with a detailed account, in chronological order, of the receipts and expenditures affecting the Development and its administration, and specifying the maintenance and repair costs of the Common Property, as well as other expenditures incurred. Vouchers accrediting the entries made thereupon will also be maintained in chronological order.

5.9 OWNERS' ACCESS TO BOOKS AND RECORDS.

Current financial records of the Association shall be available for inspection by an Owner, or an agent authorized in writing by an Owner, at the offices of the Association or such other location as may be designated by the Association. The inspection shall occur at reasonable times during normal business hours. The Association may require written notice of the particular financial records to be inspected not more than five (5) business days prior to the inspection date (or such longer period as may be reasonable if the records sought are not readily available). The inspection shall be scheduled and conducted in such a manner that the operations of the Association or its Management Agent are not unduly disrupted and the integrity of the records is ensured. The Association may charge a reasonable fee to cover reproduction, postage, administrative, and personnel expenses incurred by the Association as a result of such an inspection.

5.10 REMEDIES OF ASSOCIATION.

- 5.10.1 Remedies and Enforcement. Each Owner shall comply with this Declaration, the By-laws, and the Rules and Regulations adopted pursuant to this Declaration, as they may be amended from time to time. Failure of an Owner to so comply shall be grounds for the Association to: (A) impose fines as a Special Assessment after notice is given pursuant to the provisions of this Declaration; (B) institute an action to recover sums due, for damages, for injunctive or equitable relief, or for specific performance; or (C) exercise any other enforcement rights that may exist in law or in equity. Such actions shall be maintained by the Board of Directors on behalf of the Association. The Association may bring an action at law against

a delinquent Owner personally for the collection of any delinquent Regular Assessment, Special Assessment, or Capital Assessment, or foreclose the lien against the delinquent Owner's Lot in the same manner in which a mortgage on real property may be foreclosed in the State of South Carolina. The Association shall have the right to bid in at any foreclosure sale, and, upon conveyance to the Association, thereafter hold, lease, mortgage, and/or convey the subject Lot/Residential Dwelling Unit. Failure on the part of Declarant or the Association to exercise 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 thereto. No right of action shall accrue in favor of, and no action shall be brought or maintained by, any Person against Declarant or the Association because of its failure to bring an action as a result of any purported or threatened violation or breach by any Person of the provisions of this Declaration, the By-laws, or any Rules and Regulations of the Association.

- 5.10.2 Attorneys' Fees and Costs. In any suit, arbitration, counterclaim, or other legal action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the By-laws, or any appeal thereof, if the Declarant or the Association is the prevailing party, the Declarant or the Association shall be entitled to recover its costs and disbursements and reasonable attorneys' fees and expenses from any other party to the suit or action that is subject to this Declaration. In addition, in any suit, arbitration, counterclaim, or other legal action brought by an Owner against the Declarant or the Association, or any appeal thereof, if the Declarant or the Association is the prevailing party, the Declarant or the Association shall be entitled to recover its costs and disbursements and reasonable attorneys' fees and expenses from the Owner who filed the suit, arbitration, counterclaim, or other legal action.
- 5.10.3 Discharge of Mechanic's Liens. The Association may cause to be discharged any mechanic's lien or other encumbrance that, in the opinion of the Association, may constitute a lien against the Common Property. If less than all of the Owners are responsible for the existence of said lien, the Owner(s) responsible, as determined by the Board of Directors, shall be jointly and severally liable for the amount necessary to discharge the same, and for all related costs and expenses, including attorneys' fees and court costs, incurred by reason of the lien.

5.11 ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

Except as otherwise provided herein, each Lot is hereby allocated liability for Common Expenses equally. The Board of Directors shall have the power to assess specifically pursuant to this Section as, in its discretion, it deems appropriate. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the right to exercise authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section. Any Common Expenses benefiting less than all of the Owners or significantly disproportionately benefiting all Lots may be specifically assessed equitably among all of the

Lot which are benefited according to the benefit received, as determined in the sole discretion of the Board of Directors. Any Common Expenses occasioned by the conduct (including acts or omissions) of less than all of those entitled to occupy all of the Lots/Residential Dwelling Units or by the Occupant(s), licensees, or invitees of any such Residential Dwelling Units may be specifically assessed against such Residential Dwelling Units.

5.12 SECURITY IN THE DEVELOPMENT.

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety in the Development; however, each Owner on behalf of such Owner and the Occupants, Guests, licensees, and invitees of the subject Residential Dwelling Unit acknowledges and agrees that **THE ASSOCIATION IS NOT A PROVIDER OF SECURITY AND SHALL HAVE NO DUTY TO PROVIDE SECURITY IN AND TO THE DEVELOPMENT.**

It shall be the responsibility of each Owner to protect such Owner's person and property, and all responsibility to provide security shall lie solely with each of the respective Owners. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

NEITHER THE ASSOCIATION NOR THE DECLARANT MAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE DEVELOPMENT, REGARDLESS OF ANY GATES OR OTHER DEVICES OR MEASURES UNDERTAKEN BY THE ASSOCIATION TO SAFEGUARD THE DEVELOPMENT, NOR SHALL EITHER OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE OR ALLEGED FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SECURITY SYSTEM OR MEASURES CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM OR MEASURE WAS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND COVENANTS TO INFORM ITS TENANTS AND ALL OCCUPANTS OF HIS/HER RESIDENTIAL DWELLING UNIT THAT THE ASSOCIATION, THE BOARD OF DIRECTORS AND DECLARANT ARE NOT INSURERS, AND THAT EACH PERSON USING THE DEVELOPMENT OR ANY PORTION THEREOF ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS, RESIDENTIAL DWELLING UNITS AND THE CONTENTS OF SUCH UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

5.13 PERMITS, LICENSES, EASEMENTS, ETC.

The Association shall have the right to grant permits, licenses, utility easements, and other easements over, through, and under the Common Property without a vote of the Owners. The Owners shall be subject to the terms of agreement or arrangement entered into by the Association with regard to the grant of a permit, license, utility easement, or other easement to any third party.

5.14 RIGHT OF MAINTENANCE.

The Association shall have the right to control, manage, operate, maintain, improve, and replace all portions of the Development for which the Association is assigned maintenance responsibility under this Declaration, any applicable law or ordinance, or under the Development Instruments.

5.15 PROPERTY RIGHTS.

The Association shall have the right to acquire, hold, encumber, and dispose of tangible and intangible personal property and real property.

5.16 CASUALTY LOSS.

The Association shall have the right to deal directly with any insurance carrier and/or any governmental or quasi-governmental entity, as the case may be, in the event of damage or destruction as a result of casualty loss, or threatened or actual condemnation, or exercise of rights of eminent domain, in accordance with the provisions of this Declaration and any applicable law or ordinance.

5.17 GOVERNMENTAL ENTITIES.

The Association shall have the right to represent the Owners in dealing with governmental entities in matters regarding the Common Property.

5.18 CONTROL OVER COMMON PROPERTY.

The Association shall have the right to temporarily close or temporarily restrict access to any portion of the Common Property for emergency, security, or safety purposes, or for any such other reasonable purpose as determined in the sole discretion of the Board, with no prior notice of such closing to the Owners. Furthermore, the Association shall have the right to permanently close any portion of the Common Property upon thirty (30) days prior notice to all Owners. Any portion of the Common Property which has been permanently closed may be reopened by action of the Board or by the vote of Owners holding a Majority of the votes cast at a duly called special or annual meeting.

ARTICLE VI: ASSESSMENTS

6.1 PURPOSE OF ASSESSMENTS.

The Association shall have the power to levy Assessments as provided in this Declaration and the Development Instruments. The Assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Residential Dwelling Units on the Lots in the Development as may be more specifically authorized from time to time by the Board of Directors.

6.2 LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.

The Owner of any Lot, by acceptance of a deed for such Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all of the Assessments, fees, charges and contributions as provided in this Declaration, and as otherwise determined by the Association. Assessments, including interest and charges thereon, and costs of collection thereof

(including reasonable attorneys' fees and expenses) shall be: (A) the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment was due to the Association, and the personal obligation of any subsequent Owner (other than a mortgagee, to the extent provided in this Declaration); (B) a charge on the Lot to which such Assessments are applicable; and (C) a continuing lien and encumbrance upon such Lot in favor of the Association.

In terms of such Assessments constituting a personal obligation of the applicable Owner, the Assessment may be collected in the same manner as other debts or liens are collected under the laws of the State of South Carolina. Each Owner and each successor in title to the Lot shall be jointly and severally liable for all Assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. No Owner may be exempt from liability for or otherwise withhold payment of Assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property; the Association's failure to perform its obligations required or purportedly required under this Declaration or applicable law; or inconvenience, discomfort, or purported or actual consequential damages arising from the Association's performance of its duties or deficiency therein.

To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the unpaid Assessment, the due date, the amount remaining unpaid, including any interest or charges, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or any Management Agent of the Association and may be recorded in the RMC Office for Charleston County. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment, but notice of lien shall not be a condition precedent to or delay the attachment of the lien, which shall attach on the date that the Assessment is levied or the date of the event that gives rise to the obligation to pay the Association. Such lien may be enforced as set forth in this Declaration or as otherwise permitted by law. Such lien shall be superior to all other liens, except (A) the liens of all taxes, bonds, Assessments, and other levies which by law would be superior; and (B) the lien or charge of any first mortgage made in good faith and for value (except those accruing after the first mortgagee forecloses or takes a conveyance in lieu of foreclosure).

6.3 DATE OF COMMENCEMENT OF ASSESSMENTS.

The obligation to pay Assessments shall commence as to a Lot on the date on which such Lot is conveyed to a Person other than the Declarant. The first Annual Assessment levied on each Lot shall be prorated on a per diem basis and adjusted according to the number of days and months remaining in the fiscal year at the time Assessments commence on the Lot.

6.4 REGULAR ASSESSMENTS AND BUDGET.

- 6.4.1 Fiscal Year and Annual Budget. The fiscal year of the Association shall be the calendar year. Unless otherwise determined by the Board of Directors, the Board of Directors shall prepare or cause to be prepared by December 1 an operating budget (hereinafter, the "Budget") for the next fiscal year, setting forth the estimated Common Expenses and anticipated revenues of the Association for such fiscal year, and any projected deficit or surplus from the preceding fiscal year. (In the initial year after recordation of this Declaration, the Board of

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Directors may, in its sole discretion, prepare or cause to be prepared the Budget for the balance of the current fiscal year). The Budget, once approved by the Board of Directors, shall serve as the basis for levying Assessments to the Owners (hereinafter, the "Total Assessments") for such fiscal year and the primary guideline under which the Association is projected to be operated during such fiscal year; provided, however, that the Board of Directors may, in its sole discretion, submit the proposed Budget to a vote of the Owners or amend the Budget for good cause. If the Association 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 then in effect for the current year shall automatically be increased effective the first day of the fiscal year in the same proportion as any percentage increase during the current Year over the preceding Year, in the Consumer Price Index, all Urban Consumers, United States City Average, All Items (the "CPI") or its successor index, as determined by the Board of Directors. In order to provide time to determine any applicable increase, the "Year" for determining the CPI shall be measured from October 1 through September 30. Such adjusted Budget shall be the Budget for the succeeding year, until a new Budget is adopted. The Association shall furnish to each Owner (and any eligible mortgagee upon request) a copy of the Budget for the forthcoming fiscal year and a statement of the amount of the Assessment payable by such Owner for the fiscal year.

The budget and the Annual Assessment shall become effective unless disapproved at a duly called and constituted meeting of the Association by a vote of more than Fifty (50%) Percent of the total eligible voting power of the Association and the Declarant (so long as the Declarant owns any portion of the Regime); provided, however, that if a quorum is not obtained at such meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at the meeting. So long as the Declarant has the right to appoint and remove any member or members of the Board of Directors of the Association under the provisions of this Declaration, Declarant shall have the option, but shall not be required to, loan funds to the Association to make up any deficits in the budget and shall have the option of charging interest on all funds advanced to the Association used to fund such deficits.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and Annual Assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

For the initial year of the Association's operation, the Regular Assessment shall be \$2,100.00 per Lot, or \$175.00 per month. Declarant cannot project the exact amount of any increases or decreases in the Regular Assessment over time, however, in order for the Regular Annual Assessment to increase more than Five (5%) Percent from one year to the next, the increase must be approved by a Majority of the Owners. Such approval applies only to the Regular Assessment and shall not apply to any other financial obligations of the Owners.

- 6.4.2 Financial Statement. Within ninety (90) days following the close of the Association's fiscal year, the Board of Directors shall endeavor in good faith to prepare a "Review and Report" of the Association's finances. Upon written request, a copy of the Review and Report shall be provided to any Owner or mortgagee of any, but the Association may charge a reasonable fee to cover the reproduction, postage, and administrative expenses incurred.
- 6.4.3 Statement of Account. Upon written request of any Owner, mortgagee, bona fide prospective mortgagee, lessee, or bona fide prospective purchaser or lessee of a Lot or Residential Dwelling Unit, the Association or its duly authorized agent shall issue a written statement (which shall be conclusive upon the Association) setting forth the following: (A) The amount of any unpaid Regular Assessments, Special Assessments or Working Capital Assessments, if any, applicable to such Lot; (B) The amount of the current Regular Assessment and any current Special Assessment and the date or dates upon which any payment thereof shall become due; and (C) The amount of any credit for advance payments of Regular Assessments or Special Assessments. The Association may charge a reasonable fee to cover the reproduction, postage, personnel and administrative expenses incurred in providing such a statement.
- 6.4.4 Elements of Budget. The Budget and the Assessments shall be based upon annual estimates by the Association of its revenues and its cash requirements to pay all estimated expenses and costs arising out of or connected with the use, maintenance, and operation of the Common Property and the operation of the Association. Such estimated expenses and costs may include, among other things and without limitation, the following: expenses of management, including compensation of any Management Agent; taxes and assessments; insurance premiums and deductibles; repairs and maintenance; wages and personnel expenses for Association employees; any applicable 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 existing or anticipated expenses or costs of the Association; any principal and interest payments due for debts of the Association; and any other expenses, costs, and existing or projected liabilities that may be incurred by the Association. All such expenses and costs shall constitute the "Common Expenses."
- 6.4.5 Apportioning Assessments. Except as expressly stated in this Declaration, each Lot shall be assessed the same Regular Assessment as the other Lot, despite whether or not a Residential Dwelling Unit has been constructed.

6.4.6 When Assessments are Payable. UNLESS THE BOARD OF DIRECTORS ELECTS A DIFFERENT PAYMENT PERIOD, REGULAR ASSESSMENTS SHALL BE DUE AND PAYABLE MONTHLY (1/12 OF THE ANNUAL ASSESSMENT), PRIOR TO THE FIRST DAY OF THE CALENDAR MONTH TO WHICH THE REGULAR ASSESSMENTS APPLY. After an Owner has been notified of the amount of the periodic Regular Assessment, no further notice to the Owner of the Regular Assessment due shall be required.

6.5 SPECIAL ASSESSMENTS.

6.5.1 Special Assessments as Determined by the Board of Directors. In addition to the Regular Assessments authorized above, the Board of Directors may levy Special Assessments applicable to no more than a three (3) year period to cover costs including, but not limited to, the following: (A) any unbudgeted property taxes or assessments for Common Property; (B) in the event of an insured loss or claim, any deductible amount under the insuring policy or unfunded amount to repair the loss or satisfy the claim; and (C) unbudgeted repairs, costs, fees, or expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Common Property. Except as set forth below, Special Assessments shall be allocated among the Lots in the same manner as other Assessments. In addition to Special Assessments of all Lots, the Association may levy a Special Assessment against a particular Lot for the following reasons: (A) to cover the costs of providing services to or on behalf of a particular Lot or Owner of such Lot at the request of such Owner; or (B) to cover costs incurred as the result of the failure of the Owner or authorized users of the Lot/Residential Dwelling Unit, their agents, guests, invitees or licensees, to execute any responsibility they may have under this Declaration, the By-laws, or the Rules and Regulations.

6.5.2 Special Assessments with Owner Approval. Any other Special Assessment shall be approved by a Majority of Owners. Meetings concerning votes of Owners for the purpose of considering a Special Assessment shall be held only after written notice by the Association to the all Owners, in accordance with the notice procedure set forth in the By-laws. The meeting or vote shall occur no earlier than the date specified in the By-laws for a special meeting of the Association. The notice shall state generally the purpose and amount of the proposed Special Assessment.

6.5.3 When Special Assessments are Due. 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 Special Assessment shall have been given to the Owner.

6.6 CAPITAL CONTRIBUTIONS.

6.6.1 Payment of Initial Working Capital Assessment. In order to provide the Association with adequate working capital funds, the Association shall collect

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from the initial Owner of a Lot, at the time of transfer of Ownership to the initial Owner (other than the Declarant), an amount equal to two (2) months of the annual Regular Assessments for such Unit in effect at the time of closing on the Lot/Residential Dwelling Unit. The Association may maintain the working capital funds in a reserve account to meet unforeseen expenditures, use the funds to acquire additional equipment or services for the benefit of the Association, or it may use the funds for any reasonable purpose to benefit the Development. Such payments shall not be considered advance payments of Regular Assessments and shall not be refundable at the time of transfer of Ownership by the Owner making the payment.

- 6.6.2 Payment of Capital Contribution Upon Resale. In order to provide the Association with adequate working capital funds, the Association shall collect, at the time of transfer of Ownership of any Lot/Residential Dwelling Unit to each new Owner, an amount equal to One-Half of One (½ %) Percent of the sales price of the property. This Capital Contribution Upon Resale shall be collected at the closing on every Lot/Residential Dwelling Unit each time the a property is sold or transferred. Unless otherwise determined by the parties, the buyer in such a transaction shall be responsible for payment of this Capital Contribution Upon Resale. The provisions of this subsection shall not apply to transactions involving the initial sale of a Lot/Residential Dwelling Unit by the Declarant to an Owner; such transactions shall not be subject to the requirement to pay this Capital Contribution Upon Resale to the Association.

6.7 DELINQUENT ASSESSMENTS.

All Assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

- 6.7.1 Late Fees. If any monthly installment of Annual Assessments or any part thereof or any other charge is not paid in full within five (5) days of when due, the Association may collect a late charge of Fifty and NO/100 (\$50.00) Dollars, or such other amount as the Board of Directors may determine, in its sole discretion, plus simple interest at Eighteen (18%) Percent from the date when the Assessment is due until the date it is received by the Association. Such late charge may be imposed without further notice or warning to the delinquent Owner. Such unpaid Assessment, together with late charge(s) and interest, shall be considered a continuing lien on the Unit to which it relates and shall bind the Owner of the Unit, his heirs, successors, and assigns. The Board of Directors may, in its sole discretion, waive all or any portion of such charges or interest if it determines that the failure to pay the Assessment or charge when due was caused by circumstances beyond the control of the Owner or other good cause.
- 6.7.2 Partial Payment. If partial payment of Assessments and related charges is made, the amount received shall be applied in the following order, and no restrictive language on any check or draft (including, but not limited to, notations of "Payment in Full") shall be effective to change the order of application:

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- A. To any unpaid late charges, interest charges, and Specific Assessments (including, but not limited to, fines) in the order in which they came due;
- B. To costs of collection, including but not limited to, reasonable attorney's fees actually incurred by the Association;
- C. To any unpaid installments of the Annual Assessment or Special Assessments in the order in which they came due; and
- D. Any other amounts due and owing.

6.7.3 Acceleration. If Assessments, fines, or other charges, or any part thereof, due from an Owner are not paid when due, a notice of delinquency may be given to that Owner stating that if the Assessment, fine, or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the Annual Assessment, any Special Assessments, late fees, or other fees, assessments, or charges. If an Owner fails to pay all Assessments and related charges or fees currently due within ten (10) days of the date of the notice of delinquency, the Board of Directors may then accelerate and declare immediately due all installments of the Annual Assessment, any Special Assessments, and any Specific Assessments without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the Annual Assessment in monthly installments for that fiscal year.

6.7.4 Suit for Collection. If Assessments and other charges, or any part thereof, remain unpaid for more than thirty (30) days after the Assessment payments first become delinquent, the Association, acting through the Board of Directors, may initiate a lawsuit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act, and the laws of the State of South Carolina. In addition, the Association may suspend the Owner's and/or Occupant's right to vote and/or to use the Common Property; provided, however, that the Board of Directors may not limit ingress or egress to or from the property or disconnect utilities or other essential services to the Residential Dwelling Unit.

6.8 SUBORDINATION OF LIEN; MORTGAGEE RIGHTS.

Unpaid Assessments then due and payable on any Lot shall be paid by the conveying Owner at the time of any conveyance of the Lot/Residential Dwelling Unit, or, if not paid, shall be payable by the Person to which the property is conveyed. The lien on a Lot for unpaid Assessments shall be subordinate to the liens for any unpaid taxes and any duly recorded prior mortgage or other duly recorded lien on the Lot. Sale or transfer of any Lot shall not affect the lien for unpaid Assessments. However, if a mortgagee of any mortgage of record or other purchaser of a Lot obtains title at a foreclosure sale, the Person acquiring title shall not be liable for Assessments allocable to the Lot that accrued after the date of recording of the mortgage and prior to the acquisition of title at the foreclosure sale. Unless the Board of

Directors determines that such unpaid Assessments shall be waived or reduced by the Association, or deferred pending efforts to recover from the delinquent Owners, such unpaid Assessments shall be deemed Common Expenses collectible from all Owners, including the Person acquiring title, its successors and assigns.

6.9 ASSESSMENTS ON DECLARANT'S UNSOLD LOTS.

Anything contained in this Article to the contrary notwithstanding, so long as the Declarant owns any Lot/Residential Dwelling Unit for sale, Declarant may annually elect either to pay the regular Assessment for each such property or to pay the difference between the amount of Assessments collected on all other Lots/Residential Dwelling Units not owned by the Declarant and the amount of actual expenditures by the Association during the fiscal year, but not in a sum greater than its regular Assessment. Unless the Declarant otherwise notifies the Board at least sixty (60) days before the beginning of each fiscal year, the Declarant will be deemed to have elected to continue paying on the same basis as during the immediately preceding year. Furthermore, so long as the Declarant owns any Lot/Residential Dwelling Unit for sale, the Declarant may, but will not be obligated to, reduce the regular Assessment for any year to be paid by the Owners, which may be a contribution to the Association, an advance against future regular Assessments due from said Owners, or a loan to the Association, in Declarant's sole discretion. The amount and character (contribution, advance, or loan) of such subsidy will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

6.10 EFFECT OF MODIFICATION OF LOTS.

Notwithstanding anything to the contrary contained in this Declaration, upon any modification of the Lots in accordance with the relevant provisions of this Declaration, the resulting, single larger Lot shall be assessed as if the Lots creating the larger Lot still existed. Therefore, for example, if two (2) Lot are combined to create a single Lot, the Owner of that resulting, larger Lot shall be responsible for paying an Assessment equal to two (2) times the normal Assessment.

6.11 RESERVES.

The Board of Directors shall establish and maintain an adequate reserve fund for the periodic repair and replacement of the Common Property. The Board will include amounts needed to maintain an adequate reserve fund in its estimation of the Common Expenses for each fiscal year and will cause deposits to the reserve fund to be made in connection with the collection of the Annual Assessments. When a purchaser closes on a Lots, the Association may require an initial contribution to the reserve fund.

6.12 SURPLUS FUNDS AND COMMON PROFITS.

Common Profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such Common Profits to the payment of Common Expenses shall, at the option of the Board of Directors, be added to the Association's reserve account.

6.13 RESTRICTION ON EXPENSE OF LITIGATION.

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*Declaration of Covenants, Conditions, Easements,
Charges, Liens and Restrictions
for
The Pines at Gahagan*

Notwithstanding any contrary provision contained in this Declaration, in no event may the Association commence any action or proceeding against any Person, seeking equitable relief, or seeking either an unspecified amount of damages or damages in excess of Twenty Five Thousand and NO/100 (\$25,000.00) Dollars; or any action or proceeding where the estimated cost of legal fees exceeds Five Thousand and NO/100 (\$5,000.00) Dollars, unless the following conditions are satisfied: (A) the decision to commence such action or proceeding shall be made at an annual or special meeting of the Association; (B) a budget for such litigation, including all fees and costs assuming trial and all potential appeals, shall have been prepared by the attorneys who will be engaged by the Association for such purpose, and shall have been mailed or delivered to all Owners and posted at the principal office of the Association at least ten (10) days prior to such meeting; and (C) at such meeting, Owners representing at least two-thirds (2/3) of the votes in the Association shall approve the decision to commence the action, and the proposed budget for such action or proceeding, and shall concurrently approve the imposition of a Special Assessment to fund the costs of such action or proceeding in accordance with the approved budget. The Association shall be authorized to expend funds for such proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified in the foregoing subparts (A), (B) and (C) of this Section. The procedural requirements set forth in this Section, however, shall not apply to any action to collect or otherwise enforce Assessments and any related fines, late charges, penalties, interest, or costs and expenses, including reasonable attorneys' fees, in an amount of Twenty Five Thousand and NO/100 (\$25,000.00) Dollars or less, or any such action where the estimated cost of legal fees is less than Five Thousand and NO/100 (\$5,000.00) Dollars. All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with this Section shall be funded by means of a Special Assessment pursuant to Section the provisions of this Declaration, and in no event may the Association use reserve funds or contingency funds, reallocate previously budgeted operating funds, or incur any indebtedness in order to pay any costs and expenses incurred for such purpose. Further, if the Association commences any action or proceeding against a particular Owner or Owner(s), that particular Owner or Owner(s) shall be exempted from the obligation to pay the Special Assessment(s) levied in order to pay the costs and expenses of such action or proceeding. The monetary thresholds stated in this Section shall increase by the greater of Three (3%) Percent or the CPI Index each year on the anniversary of the filing this Declaration. The provisions of this Section cannot be amended without the approval of Owners representing at least two-thirds (2/3) of the votes in the Association.

ARTICLE VII: REPAIR, MAINTENANCE AND RECONSTRUCTION

7.1 REPAIR AND MAINTENANCE RESPONSIBILITY OF UNIT OWNERS.

Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Lot and Residential Dwelling Unit not designated as the responsibility of the Association in this Article or any other provision of the Development Instruments.

Without limiting the generality of the foregoing, each Owner shall have the following responsibilities: (A) To keep in a neat, clean, and sanitary condition his/her Lot and the exterior of the Residential Dwelling Unit thereon; (B) To perform his or her responsibility in such manner so as not to unreasonably disturb other Persons in other neighbors or otherwise lawfully on or about the Development; (C) To report promptly to the Association or its agent(s) any defects or need for repairs or maintenance for which the Association is responsible; and (D) To pay for the cost of repairing, replacing,

or cleaning any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, invitees, tenants, or Guests, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment.

Any and all personal property stored or placed in a Residential Dwelling Unit or on a Lot shall be maintained in a good, safe state of repair consistent with applicable laws, this Declaration, any applicable Rules and Regulations, and normal accepted usage of such items. Owners and their lessees or authorized users shall not be permitted to enter onto the Property with any items of personal property that will, or that are reasonably likely to, impair the structural soundness or quality of any Residential Dwelling Unit or any portion of the Property, impair the proper functioning of the utilities, impair any easement, damage or adversely affect any of the Common Property, or to disrupt any other Owner's use and enjoyment of the Property or his Lot/Residential Dwelling Unit. Each Owner shall be financially responsible for all damages to any other Owner's property or to Common Property caused by the failure of the Owner to comply with this provision.

If any maintenance, repair, or replacement of any portion of the Common Property is required because of the negligent or willful act or omission of Owner (or a lessee or other user of the Owner's property), then such Owner and/or authorized user shall be responsible for such maintenance, repair, or replacement. Any expense incurred by the Association for such maintenance, repair, or replacement that is not paid by or on behalf of the responsible Person, or is not paid or payable to the Association from insurance proceeds, shall be a personal obligation of such Owner. If the Owner fails to repay or cause to be repaid such expenses incurred by the Association within five (5) days of receipt of written notice from the Association of the amount owed, then the expense incurred as a result of the failure to repay shall be added to and become a part of the Assessment to which the Owner and his Lot are subject, and shall become a lien against the Lot as provided herein.

7.2 OWNER'S FAILURE TO MAINTAIN.

If the Board of Directors determines that any Owner has failed or refused to discharge such Owner's obligation with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and prosecute the completion thereof with all deliberate speed. If the Board of Directors determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs, including reasonable attorney fees, shall be an Assessment and a lien against the Unit.

7.3 REPAIR AND MAINTENANCE RESPONSIBILITY OF ASSOCIATION.

- 7.3.1 Common Property. As set forth in Section 5.7, the Association shall be responsible for maintaining the Common Property and certain areas of the Owner's Lots. The Association shall have the right to perform such work through a professional Operating Company or Managing Agent:
- 7.3.2 No Liability of Association. The Association shall not be liable for injury or damage to person or property caused by the elements or by any Owner, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner or such Owner's Occupant, Guest, invitee, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, Guest, invitee, or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience, discomfort, or consequential damages arising from the action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, or the failure or alleged failure to act.
- 7.3.3 Damage to Owner Property as a Result of Association Repairs/Maintenance. The Association shall repair incidental damage to any Owner's property resulting from performance of work which is the responsibility of the Association. Components that may require repair or replacement will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board. Accessibility around personal belongings for workers to perform such repairs is the responsibility of the Owner or Occupant. Removal, storage, or other protective measures regarding the safekeeping of personal items are also the responsibility of the Owner or Occupant. If removal, storage, or other protective measures are not taken by the Owner or Occupant and damage occurs to personal items due to the repair process, neither the Association nor the Board will be liable for such damage. Upon completion of such repairs the Association will perform cursory cleaning, but shall not be responsible for a detailed cleaning. The Board has sole discretion of defining what is reasonable for the level, quality, and extent of the repair and subsequent cleaning. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice the duties as are approved by the Board of Directors.

7.4 MAINTENANCE STANDARDS AND INTERPRETATION.

The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board of Directors to another. These variances shall not constitute a waiver by the Board of Directors of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board of Directors shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board of Directors. All maintenance to all portions of the Property shall be in conformance with the Community-Wide Standard of the Association established from time to time. No Owner shall perform any maintenance which may result in a change or alteration to the exterior of the Residential Dwelling Unit or Lot without the prior written approval of the Board of Directors as provided in this Declaration.

7.5 ACCESS TO UNITS.

As set forth in more detail in this Declaration, the Association and its Management Agent, Operating Company, or other designated/authorized agent(s), shall have an irrevocable right to access those portions of the Owners' Lot/Residential Dwelling Unit for which the Association has the authority to maintain in order to perform such repair and maintenance work. Such access shall be granted in accordance with the applicable terms of this Declaration.

7.6 RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Development insured by the Association as a result of fire or other casualty, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. Notwithstanding the above, the Association may elect not to proceed with reconstruction and repair if the requisite number of Owners and eligible mortgagees so decide.

Immediately after a fire or other casualty causing damage to any part of the Development insured by the Association, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially their same condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the additional costs shall be assessed against all Owners. This Assessment shall not be considered a Special Assessment. If there is a surplus of funds after repair and reconstruction is complete, such funds shall be common funds of the Association to be used as directed by the Board of Directors.

Any such reconstruction or repair shall be conducted substantially in accordance with the plans and specifications under which the Development was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board of Directors.

The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from Assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed by the Association to pay for the cost of reconstruction and repair in the manner set forth in this Article in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the structure as are designated by the Board of Directors.

ARTICLE VIII: ARCHITECTURAL REVIEW BOARD

8.1 ARB AUTHORITY.

No building, wall, fence, swimming pool, or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any landscaping or vegetation be installed or removed, nor shall any exterior addition to any existing structure or exterior change or alteration thereof be made unless and until: (A) Plans and specifications for the proposed work, showing the nature, kind, shape, height, materials, colors, finishes and location of the same, have been submitted to and approved in writing by the ARB; and (B) Copies of all necessary governmental permits have been provided to the ARB.

In reviewing each ARB application, the ARB may consider any factors it deems relevant, including, without limitation, the harmony of external design and appearance with surrounding structures and Lots, topography, and environment. Decisions may be based on purely aesthetic considerations, in the sole discretion of the ARB.

The ARB must respond in writing to applicants for design/architectural approval within forty-five (45) days after receipt of all requested information. The ARB may (A) approve the application, with or without conditions; (B) approve a portion of the application and disapprove other portions; or (C) disapprove the application in its entirety. Failure of the ARB to respond in writing within such forty-five (45) day period shall constitute approval of such application. A copy of the notice shall be maintained in the records of the ARB, which shall be available for inspection by any Owner upon request.

8.2 COMPOSITION OF ARB.

The Board of Directors shall appoint the members of the ARB, which shall be composed of no less than three (3) but not more than eleven (11) members, all of whom shall reside in the Development. The members of the ARB shall be appointed for a term of one year and may, in the Board's discretion, be appointed to serve consecutive terms. The Board shall have the power to remove any member of the ARB and fill any vacancy on the ARB resulting from the resignation, removal, death or incapacitation of any member of the ARB. In the event that the ARB ceases to perform its functions under this Article, the Board may appoint a new ARB or dissolve the ARB and assume its function. Declarant shall have all powers of the ARB until such time as the Board has initiated the ARB through the appointment of not less than three (3) members.

8.3 ARB APPEALS.

An application for architectural approval or any other Owner aggrieved by a decision of the ARB may appeal the decision of the ARB to the Board by submitting a written appeal to the Board within

twenty (20) days after the date of the ARB's written notice to the applicant of its decision. Failure to file an appeal within the time specified herein shall constitute a waiver of the right to appeal to the Board.

8.4 GUIDELINES.

In considering each application, the ARB shall be guided by the following criteria, although these guidelines shall not be the exclusive criteria governing the ARB's determinations: (A) No dwelling, garage or other approved building or portion of a building shall be located on any Lot nearer to any Lot line limits shown on the plat or required under any applicable subdivision or zoning regulations then in effect. For purposes of this restriction, eaves, steps, patio garden walls, and unenclosed porches shall not be considered as part of any building. ; (B) All buildings shall be constructed with high quality materials and workmanship. The ARB may, but shall not be obligated to, establish standards and specifications for materials and workmanship to be used on the exterior of Residential Dwelling Units; (C) Structures should be located on each Lot in such a way as to maximize the desirability of the view available not only to the home to be placed on that Lot but also with due regard for the view from surrounding homes, taking into consideration the elevation contours of each Lot, the location of large trees, and similar considerations; (D) All fuel tanks and containers shall be installed above ground and must be screened adequately with shrubbery at the time of installation. Installation shall be consistent with the normal safety precautions and all applicable governmental regulations; (E) Mailboxes shall be of uniform design as specified or approved by the ARB. Newspaper boxes must be attached to the mailbox post and shall not be installed as a separate mailbox.

8.4 COMPLETION OF WORK.

If construction does not commence on any project for which approval has been given within six (6) months after the date of such approval, such approval shall be deemed withdrawn and the Owner shall be required to reapply for approval prior to beginning such work. Once construction has commenced, it shall be diligently pursued to completion. All work, including any related landscaping provided for in the approved plans, shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the ARB grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association or any aggrieved Owner.

8.5 NO LIABILITY.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics and value of the Development, as determined by the ARB and/or the Board; they do not create any duty to any Person. The ARB shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Residential Dwelling Units are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to Owner of neighboring Lots.

Neither the Association, the Board, the ARB, or any member of the foregoing, shall be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality

of work of any contractor or subcontractors, employees, or agents of a contractor; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all such matters, the Association shall fully indemnify, defend and hold harmless the Board, the ARB, and the members of each.

ARTICLE IX: EASEMENTS

9.1 EASEMENTS FOR ASSOCIATION, MANAGEMENT AGENT, AND OPERATING COMPANY.

The Association and its directors, officers, agents, and employees, including, but not limited to, any Management Agent or Operating Company and its officers, agents, and employees, shall have a general right and easement to enter upon the Property, for any purposes reasonably required in the performance of their respective duties, including, but not limited to, the management, inspection, repair, maintenance, and replacement of Common Property and to maintain or ensure the orderly operation of the Development. Except in situations that may then reasonably be thought to constitute emergencies or situations in which access may be needed to prevent damage to the Property or adjacent property, or injury to persons on the Property or adjacent property, or unless otherwise expressly approved by the Owner(s) directly affected thereby, this easement shall only apply to Lots owned by Persons other than the Declarant during normal business hours when advance notice to the Owner(s) directly affected thereby has been properly provided.

9.2 EASEMENT FOR ACCESS, INGRESS, EGRESS, AND PARKING.

There shall be a perpetual, non-exclusive easement and right-of-way appurtenant to each Lot and Common Property for ingress, egress, and access over the roads within the Development, and through any entry gates, for vehicular and pedestrian access between such Lots, the Common Property, and public streets outside of the Development. Such easement may be exercised by the Association, the Owners, their tenants, other Occupants of the Property, and their respective guests and invitees, and by employees of the United States Postal Services acting in their official capacities.

9.3 OWNERS' EASEMENT FOR USE AND ENJOYMENT OF COMMON PROPERTY.

Every Owner shall have a nonexclusive right and easement for use and enjoyment of the Common Property, including, without limitation, any clubhouse or amenity center, the roads within the Development, rights-of-way, and pedestrian areas located on the Common Property, which shall be appurtenant to and shall pass with the title to such Owner's Lot, subject to the following: (A) The provisions of the Development Instruments, including any Rules and Regulations adopted by the Association, from time to time; (B) The right of the Association to charge reasonable Assessments as provided in this Declaration for repairs, maintenance, insurance, operation, and protection for the Common Property and to establish reserves for major repairs or improvements, and Assessments for acquisition and improvement of any additional Common Property that may be granted to or purchased by the Association; (C) The right of the Association to suspend an Owner's voting rights and rights to use the Common Property for any period during which an Assessment against the Owner's Lot remains delinquent; (D) The right of the Association to limit guest use of the Common Property and to charge guest fees as the Board deems appropriate; (E) The right of the Association to dedicate or transfer all or any part of the Common Property to any person, public or private group, corporation, agency, authority

or utility for such purposes and subject to such conditions as may be approved by the majority of the Owners.

The Owner of a Residential Dwelling Unit which has been leased to a tenant shall be deemed to have delegated all rights to use any recreational facilities within the Common Property to such tenant and the other Occupants of the leased property.

9.4 EASEMENTS FOR UTILITIES AND DRAINAGE.

There is hereby granted a blanket easement upon, across, over, and under the Common Property for ingress, egress, installation, replacing, repairing, and maintaining utilities including, but not limited to, water, gas, sewer, telephones, electricity, and other forms of telecommunication and technology cabling now existing or developed in the future. Such easements shall be for the purpose of granting to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Development and to affix and maintain utility wires, circuits, and conduits on, above, across, and under the Common Property. In addition, the Board of Directors will be entitled to grant additional permits, licenses, and easements over the Common Property for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Development.

All Lots are subject to an access, drainage, and utility easement five (5) feet in width along and inside all property lines; provided, however, that if a Residential Dwelling Unit is constructed within five (5) feet of a side property line, then there shall be no access, drainage, or utility easement along such property line to the extent that it would run through or under such structure.

The easements set forth in this Section shall include the right to cut drainage ways for surface water wherever and whenever such action may be necessary in order to maintain reasonable standards of health, safety, and appearance, and to cut any trees, bushes, or shrubbery and to make any grading of soil or take similar actions reasonably necessary to provide safe and effective utility installation and maintenance.

9.5 EASEMENTS IRRIGATION.

If deemed necessary or desirable by the Association, the association shall have an easement over all Property in the Development for access to and installation, repair, maintenance, replacement, and operation of, an underground sprinkler and/or irrigation system. Any such system serving more than one Lot shall be controlled by the Association, but water bills shall be paid by the Lot Owner on a regular basis, or as may be determined by the Association.

9.6 EASEMENT FOR DECLARANT.

Declarant, its successors and assigns, as well as any designated agent(s), shall have an alienable and transferable right and easement on, over, through, under, and across the Common Property for the purposes of: (A) constructing, installing, inspecting, maintaining, repairing, and replacing portions of the Property; and (B) the construction, sale, rental, and management of the Lots/Residential Dwelling Units.

9.7 EASEMENTS FOR RECONSTRUCTION.

In the event that any Lot/Residential Dwelling Unit, or any combination of two (2) Lots, shall include a garden wall or similar wall which lies along or close to a common boundary line, the Lots on both sides of such common boundary line shall be subject to an easement for the reconstruction of such wall in the event it shall be damaged or destroyed, such easement to be limited to such time and such interference as shall reasonably be necessary to reconstruct the wall to the condition which existed prior to the destruction or damage.

9.8 EASEMENT FOR ROOF OVERHANG.

All Lots are subject to easements along any side Lot line to accommodate the overhang of roofs from any Residential Dwelling Unit which may be built on the adjacent Lot. This easement shall permit the Owner of the Residential Dwelling Unit with the overhanging roof to go upon the adjacent Lot to the extent requirement to perform normal and proper maintenance of such roof and overhang, including gutters, and to repair or replace the same as may be necessary.

9.9 GOVERNMENTAL EASEMENT.

Police, fire, water, health, and other authorized governmental officials, employees, and vehicles shall have the right of ingress and egress to and through the Property, including but not limited to roadways, for the performance of their official duties, to the extent permitted by applicable law and any Rules and Regulations that are adopted by the Board of Directors.

9.10 RIGHT OF ENTRY.

The Association shall have the right, but not the duty, to enter any Lot in the event of an emergency or upon learning of any condition which may threaten the safety or property of any Person, including the Owner himself and his property, in order to take appropriate steps to prevent or mitigate such harm or damage.

9.11 NO VIEW EASEMENTS.

No view easements, express or implied, shall be granted to any Owner in connection with the conveyance of a Lot to such Owner. In accepting a deed to a Lot, each Owner shall be deemed to have acknowledged and agreed that such Owner is acquiring no view easements with respect to his Lot or the Residential Dwelling Unit located thereon.

9.12 PRIOR RECORDED EASEMENTS.

The Property, including each Lot, shall be subject to any easements shown on any prior recorded plat of the Property or shown of record or defined or described in this Declaration.

9.13 RULES OF CONSTRUCTION FOR EASEMENTS.

Each and every easement created by or through the operation of this Declaration shall be construed to provide the holder of such easement, whether it be the Association, the Declarant, or one or more Owners, with a perpetual, alienable, and transferable right and easement, and where language such as "and their heirs and assigns" or "and their successors and assigns" should be included to clearly

define the nature of such easements, such language shall be implied for purposes of interpretation of the easements.

9.14 EASEMENTS DEEMED GRANTED AND RESERVED.

All conveyances of a Lot hereunder, whether by the Declarant or otherwise, shall be deemed to have granted and reserved, as the context shall require, all easements set forth in this Declaration including, but not limited to, those set forth in this Article.

ARTICLE X: INSURANCE

10.1 ASSOCIATION'S OBLIGATION TO PURCHASE PROPERTY INSURANCE.

The Association shall insure the Common Property against risks, including fire, flood, earthquake, vandalism, theft, malicious mischief, or other casualties covered by standard extended coverage policies for similar properties, based upon current replacement cost. The Association shall, in its sole discretion, determine the reasonableness of costs and the reasonableness of deductibles in light of its duty to, to the greatest extent possible, cover the insurable interests in Property, for the benefit of the Association and each individual Owner, their mortgagees, and if required by agreement between a Management Agent and the Association, the Management Agent, together with the directors, officers, employees and agents, if any, of such Persons.

The property insurance obtained by the Association shall be considered a Common Expense of the Association. The Association, if possible, shall obtain insurance covering an amount equal to One Hundred (100%) Percent of the current replacement cost of the any structures or other property located on the Common Property, exclusive of land, foundations, excavation, personal property owned by any Owner, and other items normally excluded from such coverage. An insurance deductible may be included in such coverage if deemed reasonable by the Board of Directors in the exercise of sound business judgment. Such deductible, if any, shall also be considered a Common Expense of the Association, regardless of the number of Owners directly affected by the loss, and reserves may be established therefor.

The name of the insured under such master regime policy shall be the "The Pines at Gahagan Homeowners Association, Inc. for the use and benefit of the Individual Owners in The Pines at Gahagan Development."

The Board of Directors shall utilize every reasonable effort to secure a master policy covering physical damage in an amount equal to full replacement costs of all improvements located on the Common Property at commercially reasonable rates that will provide the following:

- A. That the insurer waives its rights of subrogation of any claims against the Board of Directors, officers of the Association, the individual Owners, their respective household members, and their respective insurers;
- B. That the master policy cannot be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or the Managing Agent without a prior demand in writing delivered to the Association

and to all Mortgagees of Lots to cure the defect, and the allowance of a reasonable time thereafter within which the defect may be cured;

- C. That any "no other insurance" clause contained in the master policy shall expressly exclude individual Owners' policies from its operation;
- D. That until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Lot, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of such Owner, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;
- E. That the master policy may not be canceled or substantially modified without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Lots;
- F. A construction code endorsement;
- G. An agreed value endorsement and an inflation guard endorsement;
- H. That the deductible amount per occurrence shall not exceed such amount as determined by the Board; and
- I. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals the full replacement costs.

All policies of insurance as contemplated herein shall be written with/by a company authorized to do business in the state of South Carolina and holding a rating of B+:V or better in the Financial Category as established by A.M. Best Company, Inc., if available at commercially reasonable rates, or, if not available, the best rating available. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.

Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, that no Mortgagee having an interest in such losses shall be prohibited from participating in the settlement negotiations, if any, related hereto.

In addition to the insurance required herein above, the Board shall obtain as a Common Expense the following: (a) worker's compensation insurance if and to the extent necessary to meet the requirements of law; and (b) flood insurance, to the extent that it is required by law or to the extent that the Board determines it to be necessary. The Board may also obtain such additional insurance, in such amounts and with such endorsements, as the Board determines is advisable or desirable, in its sole discretion, which additional insurance shall be a Common Expense. Such additional insurance may include without limitation, the following: (a) public liability and officers' and Directors' liability insurance, with or without a cross-liability endorsement; and (b) fidelity bonds, covering officers, Directors, employees, and other Persons who handle or are responsible for handling Association funds.

10.2 INSURANCE TRUSTEE.

The Board of Directors may, at its discretion, retain any bank, trust company, South Carolina attorney or law firm, certified public accountant, the Management Agent, the Operating Company, or other Person authorized by law to act as trustee, agent, or depository (hereinafter, the "Insurance Trustee") on behalf of the Association for the purpose of receiving or distributing any insurance proceeds. If so, the Board of Directors may delegate to the Insurance Trustee any powers or duties of the Association set forth in this Article of this Declaration. The Insurance Trustee shall not be liable for payment of premiums, the renewal or sufficiency of the policies, or failure to collect any insurance proceeds. The fees and reasonable expenses of the Insurance Trustee shall be a Common Expense.

The following provisions shall apply to the actions of an Insurance Trustee:

- A. All insurance policies obtained by the Association will name the Association and the Trustee as loss payees. Immediately upon the receipt by the Association of any insurance proceeds, the Association will endorse the instrument by means of which such proceeds are paid and deliver the instrument to the Trustee. The Trustee will not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds. Nor will the Trustee have any obligation to inspect the Project to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.
- B. Among other things, the duties of the Trustee will be to receive proceeds delivered to it, hold such proceeds in trust for the benefit of the Owners and their Mortgagees, and disburse the proceeds as hereinafter provided.
- C. Proceeds of insurance policies received by the Trustee will be disbursed as follows:
 1. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purposes, will be disbursed in payment for such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs will be paid to the Association for the benefit of all Owners and their Mortgagees, if any;
 2. If it is determined that the damage or destruction for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed to such persons as therein provided;
 3. Any and all disbursements of funds by the Trustee for any purpose whatsoever will be made pursuant to and in accordance with a certificate of the Association signed by the President and attested by the Secretary directing the Trustee to make the disbursements;
 4. If the damage or destruction is to the Common Property and is to be repaired or reconstructed, two (2) days prior written notice of each disbursement will be given to the Mortgagee known by the Trustee from the records of the Association to have the largest interest in or lien upon such Common Property; and if the

damage or destruction is to one or more Units and is to be repaired or reconstructed, said notice will also be given to the Mortgagee or Mortgagees known to the Trustee from the records of the Association to have an interest in or lien upon such Lot or Lots.

5. The Trustee will not incur liability to any Owner, Mortgagee or other person for any disbursements made by it in good faith pursuant to and in accordance with the foregoing requirements.

10.3 DAMAGE AND DESTRUCTION

Immediately after the damage or destruction by fire or other casualty to all or any part of the property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction as used in this Section means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.

Any damage or destruction to the Common Property shall be repaired or reconstructed unless Owners entitled to cast at least seventy-five (75%) percent of the total votes in the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimate of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, that any such extensions shall not exceed sixty (60) day. No mortgagee shall have the right to participate in the termination of whether the Common Property damage or destruction shall be repaired or reconstructed.

In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event, the property shall be restored to its natural state and maintained as an undeveloped portion of the Common Property by the Association in a neat and attractive condition.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, then notwithstanding anything to the contrary in this Declaration, the Board of Directors may, without the necessity of a vote of the Members, levy a Special Assessment against all Owners in the same ratio as Regular Assessments are levied. Additional Special Assessments may be made in a similar manner at any time during or following the completion of any repair or reconstruction.

10.4 USE OF EXCESS PROCEEDS.

If funds of the Association remain after completion of repairs and/or reconstruction and after payment of any Insurance Trustee's fees and other fees or costs, such funds shall be distributed in the following order:

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- A. First, to the Owners who paid Special Assessments for repair and/or reconstruction in the same proportion as their Special Assessment bears to all Special Assessments for repair and reconstruction, until all Special Assessments (and such imputed interest thereon, if any, as the Board of Directors determines is appropriate and reasonable) have been repaid;
- B. Second, to such reserves of the Association as the Board of Directors shall determine is reasonable; and
- C. Third, to the Owners in the same ratio as Regular Assessments are levied.

10.5 CONTRACT ADMINISTRATION DURING RECONSTRUCTION.

The Board of Directors, Insurance Trustee, and Owners shall endeavor to require all substantial contractors, suppliers and providers of services during repair and/or reconstruction to deliver waivers of mechanics liens on the Property and execute any affidavit required by law or reasonably required by any insurer or the Association.

10.6 ACCESS TO INSURANCE DOCUMENTATION.

The Association shall provide to Owners and/or to applicable Mortgagees, if requested in writing, a certificate of insurance or a copy of the certificate of insurance for the Common Property. Reasonable copying costs may be charged for such requests.

10.7 LIABILITY INSURANCE.

The Association will obtain, maintain and pay the premiums, as a Common Expense, a policy of comprehensive general liability insurance coverage covering, at a minimum, all of the Common Property. Coverage limits will be in amounts generally required by private Institutional Mortgage holders for projects similar in construction, location, and use to the Development; provided, however, that such coverage will be for at least One Million and NO/100 (\$1,000,000.00) Dollars for bodily injury, including death of persons, and property damage arising out of a single occurrence. Coverage under this policy will include, without limitation, legal liability to the insured for property damage, bodily injury, and death of persons in connection with the operation, maintenance, and use of the Common Property and legal liability arising out of law suits related to employment contracts in which the Association is a party. If the policy does not include "severability of interest" in its terms, an endorsement will be included which precludes the insurer's denial of the claims of an Owner because of the negligent acts of the Association or another Owner. Such policy must provide that it cannot be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the insurance policy.

10.8 AUTHORITY TO ADJUST LOSS.

The exclusive authority to negotiate, settle, and otherwise deal in all respects with insurers and adjust all losses under policies provided for herein will be vested in the Board of Directors or its duly authorized agent for the benefit of all Owners and Mortgagees; provided, however, that all Owners and Mortgagees having an interest in such loss will be advised in advance of all actions anticipated to be taken

of a material nature related to the adjustment of the loss. Each Owner, in accepting a deed to a Lot, expressly appoints the Directors, and each of them, his/her due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person on all matters related to the authority granted in this Section, including executing all documents required in connection therewith on behalf of the Owner.

10.9 INSURANCE OF INDIVIDUAL OWNERS.

Unless otherwise noted herein, the obligation for insuring any Residential Dwelling Unit or other structures or personal property shall rest exclusively with such Owner. By acceptance of a deed to any Lot the Owner shall be deemed to have acknowledged that the Association shall have no responsibility for insuring any property of any Owner or the potential liability of any Owner for acts or omissions of such Owner.

ARTICLE XI: DECLARANT RIGHT TO COMBINE AND SUBDIVIDE LOTS.

11.1 COMBINATION, SUBDIVISION AND RECONFIGURATION OF LOTS.

Declarant hereby reserves the right to: (A) physically combine the total area or space of one Lot with the total area or space of one or more adjacent Lots; (B) physically combine a part of or combination of parts of the area or space of one or more Lots with a part of or combination of parts of the area or space within one or more adjacent Lots; (C) physically subdivide the total area or space of one Lot to create two (2) or more Lots; and (D) physically subdivide the total area or space of one or more Lots and simultaneously combine a part of or combination of parts of the area or space of one ore more Lots with a part or combination of parts of the area or space within one or more adjacent Lots, resulting the in the reconfiguration of multiple Lots. Declarant shall not exercise its rights pursuant to this Section unless it is the Owner of the affected Lot(s) or has the consent of all Owners of the Lot(s) to be combined, nor shall Declarant exercise such rights without the written consent of any Mortgagee having an interest in said Lot(s). Any such combination shall be set forth in a duly executed Amendment to this Declaration, as well as a recorded plat of the affected property, both of which shall be recorded in the RMC Office for Charleston County.

11.2 EXPIRATION OF THESE RESERVED RIGHTS.

The reserved rights of Declarant set forth in this Article shall terminate upon the expiration of the Transition Period. Declarant states that: (a) its rights under this Article or under any other provision of this Declaration may be exercised with respect to the Common Property, Limited Common Property, or various Units at different times; (b) no assurances are made as to the boundaries of the Units, Common Property, or Limited Common Property that may be subject to Declarant's rights under this Article, or under any other provision of this Declaration, or as to the order in which Common Property, Limited Common Property, or Units, if any, may be subjected to such rights; and (c) if Declarant exercises any rights as to any Units pursuant to this Article or under any other provision of this Declaration, such rights may, but need not, be exercised as to all or any other portion of the Property.

ARTICLE XII: CONDEMNATION AND PARTITION OF COMMON PROPERTY

12.1 TAKING OF COMMON PROPERTY.

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If the Common Property or any part thereof shall be taken or condemned by any authority having a power of eminent domain, any compensation for such taking or condemnation shall be payable to the Association or such bank, trust company, or law firm authorized to do business in South Carolina as the Board of Directors shall designate as Trustee for all Owners unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Members in the Association agree otherwise. Such proceeds from the taking shall be used to defray construction of replacement or substitute facilities or improvements on other portions of the Common Property to the extent land is available for that purpose in accordance with the plans approved by the Board. If, however, the taking does not involve community facilities or other improvements on the Common Property (or if the requisite Members of the Association have voted against use of the proceeds in this way), then the condemnation proceeds shall be an asset of the Association to be used as the Board determines.

12.2 NO PARTITION.

Except as expressly permitted in this Declaration, there shall be no physical partition of the Common Property or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition, unless the property has been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property, nor from acquiring title to real estate that may or may not be subject to this Declaration.

ARTICLE XIII: MORTGAGES

13.1 LOT MORTGAGES.

Each Owner shall have the right, subject to the provisions hereof, to make a separate mortgage or encumbrance on the Owner's Lot/Residential Dwelling Unit.

13.2 NO MEMBERSHIP IN ASSOCIATION FOR MORTGAGEES.

No Mortgagee shall have the right to become a Member of the Association, or to receive the privileges associated with such Membership, unless the Mortgagee becomes the rightful holder of title to a Lot, as contemplated below.

13.3 ACQUISITION OF TITLE TO A UNIT.

Notwithstanding anything to the contrary contained herein, the provisions of this Declaration governing sales and leases shall not apply to impair the right of any first Mortgagee to: (A) Foreclose or take title to a Lot/Residential Dwelling Unit pursuant to remedies contained in its Mortgage; (B) Take a deed or assignment in lieu of foreclosure; or (C) Sell, lease, or otherwise dispose of a Lot/Residential Dwelling Unit acquired by the Mortgagee.

Where a First Mortgagee of record or other purchaser of a Lot obtains title to a Lot pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Lot which became due prior to such Mortgagee's acquisition of title. Such unpaid share of Common Expenses or Assessments shall be

deemed to be Common Expenses collectible from Owners of all the Lot, including such acquirer, its successors, and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is transferred.

13.4 NOTICES BY ASSOCIATION TO MORTGAGEES.

Upon written request to the Association, identifying the name and address of the Mortgagee and the mortgaged Lot number or address, any Eligible Mortgagee will be entitled to timely written notice of the following, provided that contact information from the Mortgagee has properly been supplied to the Association: (A) Any condemnation loss or any casualty loss which affects a material portion of the property securing the subject mortgage; (B) Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a first mortgage held by such Mortgagee which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Unit Owner of any other obligation under the Development Instruments which is not cured within sixty (60) days; (C) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (D) Any proposed action which would require the consent of a specified percentage of Mortgagees, as specified herein; and (E) Any other notice provided for in this Declaration.

The Association may charge a reasonable fee to cover the administrative and delivery costs to the Association for providing such written notice. Such fee shall be payable, as a Special Assessment, by the Owner of the Lot subject to the mortgage in which the Mortgagee has an interest. Failure of the Association to provide written notice to a Mortgagee shall not invalidate any action of the Association.

ARTICLE XIV: SALE OF AND TITLE TO UNITS

14.1 NOTICE OF SALE OR OTHER CONVEYANCE.

If an Owner sells or otherwise conveys a Lot/Residential Dwelling Unit, the selling or conveying Owner shall promptly cause to be furnished to the Association, in writing, the name, home address, and home telephone number of such purchaser or transferee and the forwarding address of the conveying or transferring Owner. The Association may require a transferor or transferee Owner to provide a copy of the deed or other instrument by which the Lot was conveyed. When any Person receives title to a Lot by devise or inheritance, or by any other method not heretofore considered, it shall be the responsibility of the Person acquiring title to notify the Association that such transfer has occurred and to provide the information set forth above.

14.2 TITLE SUBJECT TO EASEMENTS AND RESTRICTIONS.

Each Owner, upon acquiring title to any Lot, shall be subject to all of the rights and obligations provided for in this Declaration, in the deed of conveyance, as well as all easements and restrictions of record, some of which are referenced herein, and any and all other provisions contained in the Development Instruments.

14.3 RECORDATION OF DEED TO LOT.

Every Lot Owner shall promptly cause to be duly recorded with the Office of the RMC for Charleston County the deed conveying the Lot to such Owner. Upon written request of the Association, the Owner shall file a true copy of such evidence of title with the Association or its agent.

ARTICLE XV: AMENDMENTS TO DECLARATION

15.1 AMENDMENTS TO DECLARATION BY ASSOCIATION, UNIT OWNERS.

Amendments to this Declaration, other than those otherwise authorized herein, must be approved by at least two-thirds (2/3) of the voting interests in the Association, in accordance with the procedure set forth in the By-laws, and such Amendments shall also be approved in writing by the Declarant as long as Declarant owns a Lot or has the right to appoint any of the Directors of the Association.

15.2 AMENDMENTS TO DECLARATION BY DECLARANT.

Notwithstanding any other provision contained in any of the Development Instruments, Declarant may amend or supplement this Declaration for any reason without the consent of the Association, any Owner, any easement grantee, or any mortgagee during the Transition Period. In addition, Declarant may unilaterally amend this Declaration (without the consents mentioned in the preceding sentence) if, in Declarant's opinion, based on advice of legal counsel, such Amendment is necessary to: (A) Correct any scrivener's error; (B) Bring any provision of the Declaration into compliance with any applicable governmental statute, rule, regulation, or any judicial determination that is in conflict with this Declaration; (C) Enable any reputable title insurance company to issue title insurance coverage with respect to any Lot; (D) Enable any mortgagee to make mortgage loans on reasonable terms; (E) Enable any insurer to provide insurance required by this Declaration; or (F) clarify any provision of this Declaration or eliminate any conflict between provisions of this Declaration.

15.3 AMENDMENTS TO BY-LAWS.

The system of administration adopted by the By-laws of the Association may be modified if approved by at least two-thirds (2/3) of the votes in the Association, in accordance with the procedure set forth in the By-laws, but such modification shall not be operative or effective until the same is duly recorded in the RMC Office for Charleston County.

Amendments to Rules and Regulations may be made by a majority of the Board of Directors.

ARTICLE XVI: DURATION OF RESTRICTIONS

This Declaration, as it may be amended from time to time, shall run with the land and shall be binding upon all parties owning any portion of the Property, their heirs, administrators, executors, successors, and assigns, and all parties claiming against them and through them, for a period of thirty (30) years from the date this Declaration is recorded in the RMC Office of Charleston County, after which it shall be automatically extended for successive periods of ten (10) years each unless an instrument terminating this Declaration is signed by a majority of the then Owners and their mortgagees, if any, and recorded in the RMC Office for Charleston County.

ARTICLE XVII: OTHER RIGHTS OF DECLARANT

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17.1 DECLARANT OWNER OF ALL LOTS.

The Declarant shall be the Owner of all Lots in the Development. The Declarant retains and reserves the right to sell and lease any or all of the Lots it owns, in its sole discretion.

17.2 RESERVATION OF EASEMENT IN FAVOR OF DECLARANT.

The Declarant reserves a permanent, transferable, commercial, and appurtenant: (A) easement, including a construction easement, through all Common Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising special Declarant rights reserved in this Declaration; and (B) access easement across the Property, such easement to include the right to construct, maintain, repair, and replace all utilities.

17.3 RIGHT TO SHOW UNITS AND ADVERTISE UNITS FOR SALE.

As long as the Declarant is an Owner of a Lot/Residential Dwelling Unit, the Declarant and its duly authorized agents, representatives, and employees may maintain its properties and show them for sale and lease. The Declarant (and Declarant's agent(s)) reserve the right to post signs and displays in the Common Property to promote the sale of Lots/Residential Dwelling Units, and to conduct general sales activities in such manner as will not unreasonably disturb the rights of Owners. In addition, so long as the Declarant owns any Lot/Residential Dwelling Unit for sale in the ordinary course of business, no action may be taken by the Association or any Owner that would be detrimental to the sales of Lots/Residential Dwelling Units owned by the Declarant without a written agreement, signed by the Declarant.

Without limiting the generality of the foregoing, Declarant hereby specifically reserves the right to reserve a space in the amenity center large enough and appropriate for a sales center for the Lots/Residential Dwelling Units. Declarant reserves the right to maintain this sales center in the amenity center until every Lot is sold, but Declarant also agrees to limit the use of the area designated for real estate sales to that purpose, and Declarant shall not infringe on any Owner's use of the amenity center for its intended purpose.

17.4 TRANSFER OF DECLARANT RIGHTS

Unless the transfer of a right or interest of Declarant is expressly stated in this Declaration to occur upon the earlier happening of a defined event, any right or interest of Declarant reserved or contained in this Declaration may be transferred or assigned by the Declarant to any Person, either separately or with other rights or interests, by written instrument executed by both Declarant and the transferee and recorded in the RMC Office for Charleston County, South Carolina.

ARTICLE XVIII: NOTICES

18.1 NOTICE PROCEDURE.

Whenever notice is required or permitted under the terms of this Declaration, it shall be in writing and: (A) personally delivered; or (B) sent postage or delivery charges prepaid through the following

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means: (i) by United States mail, certified, return receipt requested, in which case notice shall be deemed to occur on the certified date of delivery or rejection of delivery; (ii) if within the United States, by First Class or Priority United States mail, in which case notice shall be deemed to occur four (4) calendar days after the postmark date; or (iii) by any dependable delivery service that provides evidence of delivery, in which case notice shall be deemed to occur on the certified date of delivery. Notices by other methods, such as facsimile or e-mail transmission, shall be valid if the recipient thereof acknowledges receipt in writing.

23.2 ADDRESSES.

23.2.1 Notice to Owners. All notices to Owners shall be sent to such address as has been provided, in writing, from time to time, by the Owner to the Association, or if no address has been so provided to the Association or no current address is known, then at the address of the Owner of the Lot on the property tax records of Charleston County, South Carolina, or at any other address that would constitute a valid address for service of process. The initial address on file with the Association shall be the address each Owner listed on his/her/it's The Pines at Gahagan Purchase Agreement. If more than one "Purchaser," as defined therein, is listed on the Agreement, the first listed address shall be used for purposes of this Article.

23.2.2 Notice to Declarant. All notices to Declarant shall be sent to:

DRMB, LLC
ATTN: Thomas B. Daniels
5081 Rivers Avenue
North Charleston, South Carolina 29406

or to such other address as has been provided, in writing, from time to time, by the Declarant to the Association.

with a copy to:

THE WOODY LAW FIRM, LLC
ATTN: Aubrey J. Woody, Jr. or Andrew L. McLester
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Phone: (843) 881-3700
Fax: (843) 881-2511
Email: skipper@woodylaw.com or andrew@woodylaw.com

23.2.3 Notice to Association. All notices to the Association shall be sent to:

THE PINES AT GAHAGAN HOMEOWNERS ASSOCIATION, INC.
ATTN: Thomas B. Daniels
5081 Rivers Avenue
North Charleston, South Carolina 29406

23.2.4 Notice to Mortgagees. All notices to mortgagees shall be sent to such address as has been provided, in writing, from time to time, to the Association in accordance with the provisions of this Declaration, or to any other address and by any procedure that would constitute a valid address for service of process.

ARTICLE XIX: ALTERNATIVE DISPUTE RESOLUTION

19.1 AGREEMENT TO AVOID COST OF LITIGATION AND TO LIMIT RIGHT TO LITIGATE.

The Declarant, Association, Owners, and any Persons not otherwise subject to the Development Instruments who agree to submit to this Article (hereinafter collectively referred to as the "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving this Declaration or the Development, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances, and disputes (including those in the nature of counterclaims and/or cross-claims) between Bound Parties involving, in any way, the Development Instruments or the Development, including without limitation, claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement thereof (hereinafter collectively referred to as "Claims"), except for "Exempt Claims" defined in Section 19.2 are subject to the procedures set forth in Section 19.3 of this Declaration.

19.2 EXEMPT CLAIMS.

The following Claims constitute the Exempt Claims and are, therefore, exempt from the provisions of Section 24.3:

- A. Any suit by the Association against any Bound Party to enforce any Assessments or other charges hereunder;
- B. Any suit by the Association to obtain a temporary restraining order (or an equivalent form of emergency relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association until the matter may be resolved on the merits pursuant to Section 19.3 below; and
- C. Any suit involving a matter which is not an Exempt Claim under (A) or (B), above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 19.3 below.

Any Bound Party having an Exempt Claim may submit it to the Alternative Dispute Resolution procedures set forth in Section 19.3, but there is no obligation to do so.

19.3 MANDATORY PROCEDURES FOR NON-EXEMPT CLAIMS.

Any Bound Party having a Claim (hereinafter, a "Claimant") against a Bound Party involving the Development Instruments or the Regime, or all or any combination of them (hereinafter, a "Respondent"), other than an Exempt Claim under Section 19.2, will not file suit in any court or initiate any proceeding

before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the following procedures, and then only to enforce the results hereof.

- 19.3.1 Notice. Within a reasonable time after the Claim in question has arisen, and in each event prior to the date when institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations, Claimant will notify Respondent in writing of the Claim (hereinafter, the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including the applicable date, time, location, person(s) involved, Respondent's role in the Claim, and the provisions of the Development Instruments or other authority out of which the Claim arises; (ii) what Claimant wants Respondent to do or not to do to resolve the Claim; and (iii) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.
- 19.3.2 Negotiation. Each Claimant and Respondent (hereinafter, the "Parties") will make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation, but not later than thirty (30) days following the Notice, unless otherwise agreed by the Parties. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the President of the Association may appoint an attorney licensed to practice law in the State of South Carolina to assist the Parties in resolving the Claim by negotiation, if in its discretion it believes the attorney's efforts will be beneficial to the Parties. Such an attorney will have been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments and will not have a conflict of interest with any of the Parties.
- 19.3.3 Final and Binding Arbitration. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (hereinafter, the "Termination of Negotiation"), a Claimant will have thirty (30) days within which to submit the Claim to binding arbitration. Such arbitration shall proceed with a single arbitrator appointed by an agreement between the Parties or, in the alternative, by the Chief Administrative Judge for the Ninth Judicial Circuit of South Carolina. In such an arbitration process, the Parties shall be entitled to utilize Rules 26 - 36 of the South Carolina Rules of Civil Procedure. The arbitration proceedings shall be conducted in Charleston or Charleston County, South Carolina on an expedited basis before a neutral arbitrator who is a member of the Bar of the State of South Carolina, who has been actively engaged in the practice of law for at least fifteen (15) years, and who specializes in commercial transactions with substantial experience in the subject matter of the subject dispute. Any attorney who serves as an arbitrator shall be compensated at a rate equal to his or her current regular hourly billing rate unless a different agreement is arranged between the Parties and the arbitrator. Upon the request of either Party, the arbitrator's award shall include findings of fact and

conclusions of law, provided that such findings may be in summary form. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Unless otherwise deemed appropriate by the arbitrator(s), the prevailing Party shall be entitled to an award of all reasonable out-of-pocket costs and expenses (including attorneys' fees and arbitrator's fees) related to the entire arbitration proceedings (including review, if applicable). If the Claimant does not submit the Claim to binding arbitration within said thirty (30) day period, the Claim will be deemed to have been abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of the Claim; provided, however, that nothing herein will release or discharge Respondent from any liability to a person not a Party to the foregoing proceedings, or the mandatory requirements set forth in this Article with respect to any subsequently arising new dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned.

19.4 ALLOCATION OF COSTS AND CLAIMS.

19.4.1 Costs of Notice and Negotiation. Each Party will bear all of its own costs incurred prior to and during the proceedings described in Sections 19.3, including the fees of its attorney or other representative. Claimant and Respondent will share equally the costs and expenses of any attorney appointed by the Board pursuant to Section 19.3, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the Board is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses.

19.4.2 Arbitration Costs. In the event the Claim proceeds to arbitration pursuant to Section 19.3, the "Prevailing Party," as hereinafter defined, will receive from the non-Prevailing Party all of its costs and expenses, including reasonable expert and attorneys' fees, incurred from commencement of selection of the arbitrator under Section 19.3 to the issuance of the Award. Furthermore, the non-Prevailing Party will pay all costs and expenses of the arbitration, including the costs and expenses of any attorney appointed pursuant to Section 19.3, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses. The "Prevailing Party" will be determined as follows:

- (i) Not less than five (5) days prior to the first meeting with the arbitrator, a Party or Parties may file and serve on the other Party(ies) an offer of settlement, and within three (3) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own offer of settlement. An offer of settlement will state that it is made under this Section and will specify the amount, exclusive of interest and costs, which the Party(ies) serving the settlement offer is/are willing to agree constitutes a settlement of the Claim;

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- (ii) An offer of settlement is considered rejected by the recipient unless an acceptance, in writing, is filed and served on the Party(ies) making the offer twenty-four (24) hours prior to the first meeting with the arbitrator;
- (iii) If an offer of settlement is rejected, it may not be referred to for any purpose at arbitration, but may be considered solely for the purpose of awarding costs and expenses of arbitration under Section 19.3;
- (iv) If Claimant makes no written offer of settlement, the amount of the Claim offered in arbitration is deemed to be Claimant's final offer of settlement under this Section;
- (v) If Respondent makes no written offer of settlement, Respondent's offer of settlement under this Section is deemed to be zero; or
- (vi) The Party(ies) whose offer, made or deemed made, is closer to the Award granted by the arbitrator is considered the "Prevailing Party" hereunder. If the difference between Claimant's and Respondent's offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of costs and expenses of arbitration in which event each party shall be responsible of their attorneys' fees and the parties shall share equally the cost of the arbitrator.

19.5 ENFORCEMENT OF RESOLUTION.

If the Parties agree to resolve any Claim through negotiation in accordance with this Article and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in Section 19.3. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all the Parties pro rata) all costs incurred in enforcing the agreement or Award, including, without limitation, reasonable attorneys' fees and court costs.

19.6 LITIGATION.

No judicial or administrative proceeding with an amount in controversy exceeding Twenty Five Thousand and NO/100 (\$25,000.00) Dollars, will be commenced or prosecuted by the Association unless approved by a Majority of the Members of the Association entitled to vote at a regular or special meeting at which a quorum is present, duly called, in whole or in part, for the purpose of approving the proceeding. This Section will not apply, however, to actions brought by the Association to enforce the

provisions of this Declaration (including, without limitation, the foreclosure of liens); the imposition and collection of Assessments; proceedings involving challenges to ad valorem taxation; counterclaims brought by the Association in proceedings instituted against it; or actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the Amendment is approved by the requisite percentage of votes of Members of the Association constituting a Majority of the Members, and pursuant to the same procedures necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Article, if applicable.

19.7 MISCELLANEOUS ALTERNATIVE DISPUTE RESOLUTION PROVISIONS.

19.7.1 Conflicting Provisions. In the event of any conflict or discrepancy between the terms and conditions set forth in this Article and any term, condition, or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein will control.

19.7.2 TIME IS OF THE ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article will be strictly adhered to, TIME BEING OF THE ESSENCE.

ARTICLE XX: RULES OF CONSTRUCTION OF THIS DECLARATION AND THE OTHER DEVELOPMENT INSTRUMENTS

20.1 COVENANTS RUNNING WITH THE LAND.

All provisions of this Declaration shall be construed to be covenants running with the land. Each and every provision of this Declaration will bind and inure to the benefit of Declarant and all Owners and claimants of the Condominium or any part thereof or interest therein, and their heirs, executors, successors, and assigns.

20.2 APPLICABLE LAW.

This Declaration and the Association's By-laws 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, provided that such interpretation is reasonable. The provisions of the Declaration shall also be liberally interpreted and, if necessary, be extended or enlarged by reasonable implication as to make them fully effective.

20.3 EFFECTIVE DATE.

The effective date of this Declaration shall be the date of its filing for record in the RMC Office for Charleston County, South Carolina.

20.4 CAPTIONS AND HEADINGS.

The captions and headings used herein as to the contents of various portions of the Declaration are inserted only for convenience and are not to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular provisions to which they refer.

20.5 GENDER.

In construing the provisions of this Declaration and the By-laws of the Association, the use of the masculine gender shall be deemed to refer to the feminine and neuter genders as well, and vice versa. In addition, use of the singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to any Person, as defined herein, shall in all cases be assumed where reasonably required.

20.6 NO WAIVER.

No provision contained in this Declaration or the By-laws of the Association shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number or degree of the violation(s) or breach(es) which may have occurred.

20.7 INVALIDITY OF PROVISION; SEVERABILITY.

The invalidity of any provision of this Declaration or the By-laws of the Association shall not be deemed to impair or affect, in any manner, the validity, enforceability, or effect of the remaining provisions thereof. In the event that any provision of any one or more of the Development Instruments are deemed to be invalid by the proper authority, all of the other provisions thereof shall continue in full force and effect.

20.8 CONFLICT WITH LAWS.

This Declaration is intended to comply with the Act and, to the extent reasonable, shall be so construed. If any provision of this Declaration clearly conflicts with a mandatory provision of the Act or applicable law, the provisions of the Act or applicable shall apply and control. If such conflict invalidates any provision of this Declaration, such invalidation will not affect any of the other provisions contained herein, and the other provisions shall remain in full force and effect.

20.9 PERSONS AND PROPERTIES SUBJECT TO DECLARATION.

All present and future Lot Owners, lessees, authorized users, and mortgagees of Lots shall be subject to and shall comply with the provisions of the Development Instruments as they now exist and as they may be amended, from time to time. The acceptance of a deed or the exercise of any incident of Ownership or the entering into of a lease of a Lot/Residential Dwelling Unit shall constitute an agreement that the provisions of such Development Instruments are accepted and ratified by such Owner, lessee, authorized user, or mortgagee, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any Persons having, at any time, any interest or estate in such Lot as though the provisions of this Article had been recited and stipulated at length in each and every deed, conveyance, or lease thereof.

[SIGNATURES ON FOLLOWING PAGE]

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*Declaration of Covenants, Conditions, Easements,
Charges, Liens and Restrictions
for
The Pines at Gahagan*

IN WITNESS WHEREOF, the Declarant has hereunto set its Hand and Seal this 30th day of September, 2009 to this DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, CHARGES, LIENS AND RESTRICTIONS FOR THE PINES AT GAHAGAN.

WITNESSES:

DRMB, LLC, a South Carolina limited liability company.

[Signature]
Witness # 1

BY: [Signature]
William John Marx, Its Member

Witness # 2

STATE OF SOUTH CAROLINA)
)
COUNTY CHARLESTON)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public for the State of South Carolina do hereby certify that William John Marx the Member of DRMB, LLC, a South Carolina limited liability company personally appeared before me this 30th day of September, 2009 and acknowledged the due execution of the foregoing instrument.

[Signature]
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
My commission expires: 8/19/2017

EXHIBIT A
Property Description

EXHIBIT A

ALL that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situate, lying and being in Charleston County, SC, containing 27.69 acres, more or less, as shown on that certain plat dated November 21, 2005, revised November 2, 2006 and entitled "Boundary Survey Combining Tracts 3A, 3C & 3D, 27.69 Acres Owned by Bufort C. Blanton, Sr About to be Conveyed to The Pines at Gahagan, LLC and to be Financed by Traditions Capital Fund I, LLC and Its assigns Located in the Town of Summerville, Charleston County, SC" prepared by Paul C. Lawson, Jr. and recorded in the Office for the Register of Deeds for Charleston County in Plat Book EK at page 182; said tract of land having such size, shape, location, dimensions, buttings and boundings as shown on said plat.

LESS AND EXCEPT:

ALL those certain pieces, parcels or lots of land, together with the buildings and improvements thereon, situate, lying and being in Charleston County, South Carolina, being known and designated as Lots 1, 2, 3, and 4, THE PINES AT GAHAGAN SUBDIVISION PHASE I, as shown on that certain plat entitled "Final Survey for Lots 1-4, The Pines at Gahagan Subdivision Phase I, Owned by The Pines at Gahagan, LLC, Located in the Town of Summerville, Charleston County, South Carolina," prepared by Paul C. Lawson, Jr., dated February 27, 2007 and recorded in the RMC Office for Charleston County in Plat Book EK, at Page 699; said lots having the same size, shape, location, dimensions, buttings and boundings as shown on said plat.

BEING the same property conveyed to DRMB, LLC by deed of Mikell R. Scarborough, as Master in Equity for Charleston County dated April 3, 2009 and recorded in the RMC Office for Charleston County in Book 0046, at Page 557.

EXHIBIT B
Articles of Incorporation

**ARTICLES OF INCORPORATION
OF
THE PINES AT GAHAGAN HOMEOWNERS ASSOCIATION, INC.
(A South Carolina Nonprofit Corporation)**

ARTICLE I: NAME OF ASSOCIATION

The name of the corporation is The Pines at Gahagan Homeowners Association, Inc. (hereinafter, the "Association").

ARTICLE 2: NONPROFIT STATUS OF ASSOCIATION CORPORATION

The Association is formed as a nonstock, nonprofit, mutual benefit corporation under the laws of the State of South Carolina, Title 33, Chapter 31, Article 1, Code of Laws of South Carolina, 1976.

ARTICLE 3: PRINCIPAL OFFICE

The mailing address of the initial office of the Association is located in Charleston County, South Carolina at the following address 5081 Rivers Avenue, North Charleston, South Carolina 29406.

ARTICLE IV: REGISTERED AGENT AND ADDRESS

The Association hereby appoints **Thomas B. Daniels** whose address is **5081 Rivers Avenue, North Charleston, South Carolina 29406**, as its lawful statutory agent upon whom all notices and processes, including service of summons, may be served, and which when served, shall be lawful, personal service upon this corporation. The Board may, at any time, appoint another agent for such purpose and filling of such appointment shall revoke this or any other previous appointment of such agent.

ARTICLE V: DEFINITIONS

All capitalized terms used herein which are not defined shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Easements, Charges, Liens and Restrictions for the Pines at Gahagan (hereinafter, the "Declaration"), recorded, or to be recorded, in the public records for Charleston County, as it may be amended, unless the context indicates otherwise.

ARTICLE VI: PURPOSES OF ASSOCIATION

The purposes for which the Association is formed are:

- A. To be and constitute the Association to which reference is made in the Declaration, to perform any and all obligations and duties of the Association, and to exercise any and all rights and powers of the Association, as specified in the Declaration and the By-Laws, and as provided by law; and
- B. To provide an entity for the furtherance of the interests of the Owners.

ARTICLE VII: POWERS OF ASSOCIATION

The powers of the Association shall include and be governed by the following provisions:

- A. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under South Carolina law and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws, and the Declaration, including without limitation, the power:
1. To fix, collect, and enforce payment, by any lawful means, of Assessments and other charges to be levied against the Owners of Lots in the Development;
 2. To manage, control, operate, maintain, repair, and improve the Property for which the Association, by rule, regulation, covenant, or contract, has a right or duty to provide such services;
 3. To enforce covenants, conditions, or restrictions affecting any Property to the extent the Association may be authorized to do so under the Declaration or the By-Laws;
 4. To engage in activities which will actively foster, promote, and advance the common interest of all Lot Owners subject to the Declaration;
 5. To buy or otherwise acquire, sell, dedicate for public use or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, own, hold, use, operate, grant easements, and otherwise deal in and with real and personal property of all kinds and any right or interest therein for any purpose of the Association, subject to such limitations as may be set forth in the Declaration or the By-Laws;
 6. To borrow money for any purpose, subject to such limitations as may be set forth in the Declaration or By-Laws;
 7. To enter into, make, perform, and enforce contracts of every kind and description and to do any and all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;
 8. To act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interest in such corporations, firms, or individuals;
 9. To adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration; and

10. To provide any and all services to the Association as may be necessary or proper.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other rights or powers which may now or hereafter be permitted by law. The powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other provision of this Article.

- B. The Association shall make no distributions of income to its Members, directors, or officers.

ARTICLE VIII: MEMBERSHIP IN ASSOCIATION

- A. The Association shall be a membership corporation without certificates or shares of stock. The Owner of each Lot shall be a Member of the Association and shall be entitled to vote in accordance with the terms of the Declaration and the By-Laws. The manner of exercising voting rights shall be as set forth in the Declaration or in the By-Laws of the Association.
- B. Change of membership in the Association shall be established by recording in the public records a deed or other instrument establishing record title to real property subject to the Declaration. Upon such recordation, the Owner designated by such instrument shall become a Member of the Association and the membership of the prior Owner shall be terminated.
- C. The share of a Member in the privileges, rights, and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as appurtenance of his/hers/its Lot.

ARTICLE IX: DISSOLUTION OF ASSOCIATION

The Association may be dissolved only upon a resolution duly adopted by the Board of Directors and the approval of Members holding at least two-thirds (2/3) of the votes in the Association, or such higher percentage as may be required by the South Carolina law, and the written consent of the Developer so long as the Developer owns any property subject to the Declaration or which may be unilaterally subjected to the Declaration by the Developer. Upon dissolution, the assets shall be distributed to the Association's Members, or if the Association has no Members, to those persons to whom the Association holds itself out as benefiting or serving.

ARTICLE X: DIRECTORS AND OFFICERS OF ASSOCIATION

- A. The business and affairs of the Association shall be conducted, managed and controlled by the Board of Directors. The initial Board shall consist of three (3) Directors. The number of directors may be increased in accordance with the By-Laws.
- B. The method of election, removal, and filling of vacancies on the Board of Directors and the term of office of the directors and officers shall be as set forth in the By-Laws.

ARTICLE XI: BY-LAWS

The By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided for in the By-Laws and/or the Declaration. The quorum required for meetings of Members and Directors shall be as forth in By-Laws.

ARTICLE XII: LIABILITY OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS

To the fullest extent that South Carolina law, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, officers, and committee members, no Director, officer or committee member of the Association shall be personally liable to the Association or its Members for monetary damages for breach of duty of care or other duty as a Director, officer or committee member. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any Director, officer, or committee member for or with respect to any acts or omissions of such Director, officer, or committee member occurring prior to such amendment or repeal.

ARTICLE XIII: AMENDMENTS TO ARTICLES

- A. The Board of Directors may amend these Articles without Member approval for specific purposes permitted under South Carolina law.
- B. The Developer may unilaterally amend these Articles at any time and from time to time if such amendment is necessary: (1) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (2) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (3) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (4) to satisfy the requirements of any local, state or federal governmental agency.
- C. Other amendments to these Articles of Incorporation may be adopted by the approval of Members holding at least two-thirds (2/3) of the total votes in the Association, and the written consent of the Developer so long as the Developer owns any property subject to the Declaration or which may unilaterally be subjected to the Declaration by the Developer; provided, however, that no amendment may be in conflict with the Declaration; and provided, further, that no amendment shall be effective to impair or dilute any rights of Members that are governed by the Declaration. For so long as required under South Carolina law, notice of any amendment to these Articles shall be sent to Members by registered mail or published in a newspaper in Charleston County, South Carolina not less than five (5) days before the time set for the vote on such amendment.


ARTICLE XIV: INCORPORATOR

The name and address of the incorporator of the Association is:

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Articles of Incorporation
for
The Pines at Gahagan Homeowners Association, Inc.

Andrew L. McLester, Esq.
The Woody Law Firm, LLC
622 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation, this 30th day
of September, 2009.



Andrew L. McLester, Incorporator

EXHIBIT C
By-Laws

**BY-LAWS
OF
THE PINES AT GAHAGAN HOMEOWNERS ASSOCIATION, INC.
(A South Carolina Nonprofit Corporation)**

ARTICLE I: NAME, PURPOSE, AND LOCATION

The name of the corporation is The Pines at Gahagan Homeowners Association, Inc. (hereinafter, the "Association"). The principal office of the corporation shall be located in Charleston County, South Carolina, and the meetings of Members and Directors may be held at such places within Charleston County, South Carolina, as may be designated by the Board of Directors.

The purpose of the Association shall be administering and maintaining certain common property in The Pines at Gahagan subdivision and enforcing the covenants and restrictions as set forth in the Declaration of Covenants, Conditions, Easements, and Restrictions Applicable to The Pines at Gahagan subdivision (hereinafter, the "Declaration").

ARTICLE II: DEFINITIONS

The Definitions set out in Article I of the Declaration, as the same may be amended from time to time, are adopted as part of the By-Laws of the Association and are incorporated herein by reference, as if they were set forth here verbatim.

ARTICLE III: MEMBERS OF THE ASSOCIATION

3.1 Membership in the Association. The Members of the Association shall be the Owners, as a matter of public record, of every parcel (hereinafter, "Lot") within the Property described in Exhibit A to the DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS APPLICABLE TO THE PINES AT GAHAGAN, as amended (hereinafter, the "Property") as those terms are defined in the Declaration. At the time of creation and organization of this Association, the Property and any Lots within it are owned by DRMB, LLC (hereinafter, the "Declarant"). These By-Laws and the Declaration were created by the Declarant.

The Board of Directors of the Association may, after notice and hearing, suspend any Owner's membership in the Association during any period of time when such Owner is in default of any of his or her obligations under the Development Instruments, provided that such default has continued uncured for a period of ten (10) days after written notice thereof to such Member.

3.2 MEMBERSHIP CLASSES. The Association shall have the following three (3) classes of voting Members:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned.

Class B. The Class B Member 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 a Class A membership as described in the Declaration. Until the Class B Members are converted to Class A Members, Declarant shall be entitled to appoint all members of the Board of Directors, and the Association need not hold a meeting to elect directors until conversion of the Class B Members.

Class C Members: The Class C Member shall be the Declarant, upon termination of the Class B Membership, as set forth above. The Class C Member shall have no voting rights and no assessment obligations. The Class C Member shall enjoy certain limited rights under the Declaration and the other Development Instruments, including without limitation, the right to: (A) Obtain access to, and electronic and/or paper copies of, the Association's books and records, including financial and membership data; and (B) Call Special Meetings of the Association on any topic or issue it sees fit in its sole discretion, although the Class C Member would not be entitled to vote at said meeting. Class C Membership shall terminate at the voluntary discretion of Declarant, although there is no requirement that this membership class be terminated.

- 3.3 Inspection Rights. The books, records, and papers of the Association shall at all times be subject to inspection by any Member during reasonable business hours. The Declaration, the Articles of Incorporation, and the By-Laws of the Association shall be available for by any Member at the principal office of the Association. The Association may charge a reasonable fee for copies of documents made for Members.
- 3.4 Voting Rights. All Class A Members shall be entitled to one (1) vote for each Lot owned, except as otherwise provided for herein. When more than one person holds an interest in any Lot, despite the number of Owners, all Owners together shall collectively have only one (1) vote among themselves. In the event multiple Owners hold title to a single Lot, it shall be the responsibility of those Owners to provide the Association with written notification, with the signatures of all those persons owning an interest in the Lot, of the name and mailing address of one (1) individual authorized to receive notification from the Association and to cast the single vote corresponding to that Lot. If more than one co-Owner attempts to cast the vote for such Lot, the votes for such Lot shall be disregarded. Class A Membership shall be mandatory for all Owners except the Declarant and may not be separated from ownership of any Lot.

A Member may assign his or her voting rights to his or her lessee; provided, however, that the Member may not assign to such lessee any vote or votes not attributable to the Lot actually leased by such lessee.

The Members shall have the right to vote for the election and removal of Directors and upon such other matters with respect to which a vote of Members is required under the Declaration. Each Class A Member shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be entitled to eight (8) votes for each Lot owned. When voting for election of Directors, the vote for a particular Lot shall be multiplied by the number of positions to be filled by such election and the resulting total number of votes for that Lot may be cast for a single candidate or may be split among multiple candidates as the Owner(s) of such Lot determine appropriate. In such elections, all votes must be cast in

whole numbers and not fractions thereof. On any matter other than election of Directors, there shall be no splitting of votes.

- 3.5 Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall be suspended throughout the term of any default under these By-Laws or of the Declaration.
- 3.6 Control by Declarant. Notwithstanding any other language or provision to the contrary in the Declaration or in these By-Laws, unless Declarant has surrendered by Declarant of the authority to appoint and remove Directors and Officers by an express amendment to the Declaration duly executed and recorded by Declarant, Declarant hereby retains the right to appoint and remove any Members of the Board of Directors of the Association and any Officer or Officers of the Association until thirty (30) days after the Class B membership is converted to Class A membership, as outlined in the Declaration. Upon the expiration of the period of Declarant's right to appoint and remove Directors and Officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if it then owns one or more Lots, and a Special Meeting of the Association shall then be called for and held within thirty (30) days from the date of the expiration of Declarant's rights hereunder. At such Special Meeting, the Owners shall elect a new Board of Directors which shall undertake the responsibilities of operating the Association, and Declarant shall deliver to the new Board of Directors the books, accounts, and records which it has kept on behalf of the Association, as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner, by acceptance of a deed to or other instrument of conveyance of a Lot, vests in Declarant such authority to appoint and remove Directors and Officers of the Association as provided in this Section.

ARTICLE IV: MEETING OF MEMBERS

- 4.1 Annual Meeting. The annual meeting of the Members shall be held during the month of November on a date set by the Board, or such other time as the Board may determine. Such annual meetings shall be held for the purpose of electing Directors and for the transaction of such other business as may come before the meeting.

If the annual meeting shall not be held on the day designated by these By-Laws, a Substitute Annual Meeting may be called. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

- 4.2 Special Meetings. Special meetings of the Members may be called by the President, the Board, or Class A Members representing not less than twenty (20%) percent of the Class A votes. The request for the special meeting shall be signed, dated, and delivered to a corporate Officer and shall describe the purpose for which the meeting is to be held.
- 4.3 Place of Meetings. The Board may designate any location within Charleston County, South Carolina as the place for any annual meeting or special meeting called by the Board, and the President may designate any location in Charleston County, South Carolina as the place for any special meeting called by him or her. If no designation is made or if the

Members of the Association call a special meeting, the place of the meeting shall be the principal office of the Association within Charleston County, South Carolina.

- 4.4 Notice of Meeting. Written notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed or delivered not less than fifteen (15) days nor more than sixty (60) days before the date of the meeting. Notices shall be delivered by or at the direction of the President or the Secretary or the person calling the meeting, to each Member of the Association at his or her address as shown on the records of the Association and shall be delivered either personally or by first class mail with postage prepaid. A Member may waive notice of any meeting before or after the date of the meeting stated herein; provided such waiver is in writing and signed and dated by the Member.
- 4.5 Informal Action by Members. Any action required or permitted by law to be taken at a meeting of the Members of the Association may be taken without a meeting if a written consent setting forth the action so taken shall be signed and dated by those Members representing eighty (80%) percent of the voting power of each class of membership, which consent shall be filed with the Secretary of the Association as part of the corporate records.
- 4.6 Quorum Required for any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members at an open meeting of the Association shall be ten (10%) percent of the total votes entitled to be cast within each class of membership, whether such percentage appears in person or by proxy.
- 4.7 Conduct of Meetings. The Directors may make such regulations as they deem advisable for any meeting of the Members, including proof of membership in the Association, evidence of the right to vote, and the appointment and duties of inspectors of votes. Such regulation shall be binding upon the Association and its Members.
- 4.8 Ballots by Mail. When required by the Board, the notices of regular or special meetings shall be accompanied by a statement of certain motions to be introduced for vote of the Members and a ballot on which each Member may vote for or against the motion. Each ballot, which is represented at such meetings, shall be counted in calculating the quorum requirements set out in this Article IV; provided, however, that such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballots.
- 4.9 Proxies. Each Member entitled to vote may vote in person or by proxy at all meetings of the Association. All proxies shall be executed in writing by the Member or by his or her duly authorized attorney-in-fact and filed with the Secretary. No proxy shall extend beyond the date of the meeting for which it is given unless such meeting is adjourned to a subsequent date and no proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Any proxy shall automatically cease upon sale by the Member of his or her Lot.
- 4.10 Parliamentary Procedure. At all meetings, "Roberts Rules of Order, Revised" shall govern for any question of procedure not covered by the By-Laws.

ARTICLE V: BOARD OF DIRECTORS

- 5.1 General Powers. The Board shall manage the affairs of the Association. The Director or Directors comprising the Board need not be Members.
- 5.2 Number and Tenure. The initial number of Directors shall be three (3). At the first annual meeting, the Members shall elect two (2) Directors for a term of two (2) years and one (1) Director for a term of one (1) year. Any vacancy occurring in the initial or any subsequent Board may be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors, even if less than a quorum of the Board, or by a sole remaining Director. If vacancies on the Board are not previously filled in this manner, then such vacancies shall be filled at the next succeeding meeting of the Members. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director(s) whose position he or she was elected to fill. Election of Directors may be conducted by mail ballot if the Board so determines.
- 5.3 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall, in its discretion, determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.
- 5.4 Annual Meeting. Annual meetings of the Board shall be held immediately following the annual meeting of the Members. The Board may provide by resolution the time and place for the holding of additional regular meetings of the Board without notice.
- 5.5 Notice. When notice of any meeting of the Board is required, such notice shall be given at least seven (7) days prior to such meeting by written notice delivered personally or sent by mail to each Director at his or her address as shown on the records of the Association. If the notice is mailed, when it is deposited with postage prepaid in the United States Mail in a properly addressed sealed envelope it will be deemed delivered. Any Director may waive notice of any meeting before or after the time of the meeting stated therein and attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, the Articles of Incorporation, these By-Laws, or the Declaration.

- 5.6 Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a majority of the Directors are present at said meeting, no business may be transacted and the Directors present may adjourn the meeting without further notice. If a quorum of the Board cannot be attained within sixty (60) days after any such adjournment, then any one of the Directors may issue notice of a special meeting of the Members for the purpose of deliberating and transacting any business of the Association, including business which would have come before the Board but for the Board's failure to attain a quorum.
- 5.7 Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.
- 5.8 Compensation. Directors shall not receive any monetary compensation for their services, but by resolution of the Board, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties as Director. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefore.
- 5.9 Informal Action my Directors. Any action required or permitted by law to be taken at a meeting of Directors may be taken without a meeting if a consent, in writing, setting forth the action so taken shall be filed with the Secretary of the Association as part of the corporate records.
- 5.10 Removal of Directors. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members. The vacancy thus created by such removal shall be filled as provided in Section 2 of this Article.
- 5.11 Bonds. The Board of Directors may, by resolution, require any or all Officers, agents, and employees of the Association to give a bond to the Association with sufficient sureties conditioned on the faithful performance of the duties of their respective offices or positions and to comply with such other conditions as may from time to time be required by the Board of Directors.

ARTICLE VI: POWERS AND DUTIES OF THE BOARD OF DIRECTORS

- 6.1 Powers. The Board shall have the power to:
- A. Adopt and publish Rules and Regulations governing the use of the Common Property and the personal conduct of the Members and their employees, clients, visitors, tenants, and invitees thereon and to establish penalties for the infraction thereof;
 - B. Administer, manage, repair, and maintain the Common Property; provided, however, that if the Board of Directors does not repair or maintain the Common Property, the Declarant shall have the right (but not the obligation) to do so at the expense of the Association;

- C. Exercise for the Association all powers provided in the Association's Articles of Incorporation, as amended from time to time, including without limitation the power to suspend the voting rights and the rights to use of the Common Property of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Prior to any suspension or assessment and fine, the Member will be entitled to a hearing procedure to be adopted by the Board which provides (1) not less than fifteen (15) days prior written notice of the expulsion, suspension, or termination and the reasons therefor; (2) an opportunity for the Member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; (3) such lesser notice or greater notice depending on the nature of the infraction so long as such notice and hearing process is fair and reasonable, taking into consideration all of the relevant facts and circumstances; (4) written notice must be given by first class or certified mail sent to the last address of the Member shown on the Association's records; (5) any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension, or termination; and (6) that any Member who has been expelled or suspended shall remain liable to the Association for dues, Assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension or arising thereafter so long as the Member is a Lot Owner in the Pines at Gahagan Community. Such voting rights or rights to use Common Property may also be suspended, after notice and hearing, for a period not to exceed ninety (90) days for infraction of published rules and regulations. Unless, however, such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days thereafter;
- D. Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the Association's Articles of Incorporation;
- E. Grant permits, licenses, and easements over the Common Property for utilities, roads, and other purposes reasonably necessary or useful for the property maintenance or operation of the Property;
- F. To the extent allowed by law, the Board shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association, which loans shall be used by the Association in performing its authorized functions. Notwithstanding anything in the Declaration to the contrary, the Association shall not be allowed to reduce the amount of the annual assessment at any time there are any such loans with an outstanding balance due;
- G. Employ a manager, independent contractor, accountant, attorney, or such other employees as it deems necessary, and to prescribe their duties;

- H. Acquire additional areas for the Common Property, mortgage the Common Property, and sign notes and mortgages and other loan closing documents in order to make improvements to the Pines at Gahagan community, so long as such acquisition or mortgage and loan shall have the approval of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose;
- I. Exercise for the Association all powers, duties, and authority as set forth in the South Carolina Non-Profit Corporation Act;
- J. Publish a notice and hearing process to be used before a Member can be fined or suspended; and
- K. Provide for the issuance of certificates evidencing membership in the Association, which shall be in such form as may be determined by the Board and the Board shall authorize the Association's President, Secretary, or an Assistant Secretary to sign such certificates. Any such certificates authorized by the Board shall be consecutively numbered and the name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Association. Further, the Board may determine the terms and conditions for issuance of a new certificate if any certificate shall become lost, mutilated, or destroyed.

6.2 Duties. It shall be the duty of the Board to:

- A. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting when such statement is requested in writing by a one-fourth (1/4) vote of the Members who are entitled to vote;
- B. Supervise all Officers, agents, and employees of the Association, and to see that their duties are properly performed;
- C. As more fully provided in the Declaration, to:
 - 1. Fix the amounts of all Assessments,
 - 2. Send written notice of all Assessments to every Owner subject thereto,
 - 3. Seek legal action for delinquent Assessments, and
 - 4. Provide for an Architectural Review Board, including such guidelines as the Board may determine;
- D. 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. The Board may assess a reasonable charge for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

- E. Procure and maintain adequate liability and hazard insurance on property owned or leased by the Association;
- F. Cause all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- G. Cause the Pines at Gahagan's Common Property, and the other authorized areas, to be maintained or improved.

ARTICLE VII: OFFICERS

- 7.1 **General.** The Officers of the Association shall be a President, Vice President, and Secretary-Treasurer. The Board may elect such other Officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such Officers to have the authority and to perform the duties prescribed from time to time by the Board. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. The President shall be a Director of the Association. Other Officers may be, but need not be, Directors of the Association.
- 7.2 **Powers and Duties.** The Officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board, except as otherwise determined by the Board. Furthermore, the Officers shall have the following specific duties:
- A. **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other written instruments; and shall sign all promissory notes and, in the absence of the Treasurer, shall sign all checks.
 - B. **Vice President.** The Vice President shall act in the place and stead of the President in the event of the President's absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.
 - C. **Secretary-Treasurer.** The Secretary-Treasurer shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as required by the Board. The Secretary-Treasurer shall also receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; sign all checks of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and prepare an annual budget

and a statement of income and expenditures to be represented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

- 7.3 Election, Term of Office, and Vacancies. The Officers of the Association shall be elected annually by the Board at its annual meeting following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.
- 7.4 Removal. Any Officer may be removed by the Board whenever, in its judgment, the best interest of the Association will be served thereby.
- 7.5 Resignation. Any Officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE VIII: COMMITTEES

- 8.1 Nominating Committee. The Association shall appoint a Nominating Committee as provided in these By-Laws.
- 8.2 Committees of Directors. The Board may designate one or more committees to have and exercise the authority of the Board in the management of the affairs of the Association; provided, however, each such committee must consist of one (1) or more Directors and the Board's resolution enabling the committee sets forth the extent to which the committee may exercise the Board's authority. It is specifically provided, however, that no such committee shall have the authority of the Board as to the following matters:
- A. The dissolution, merger, or consolidation of the Association;
 - B. The amendment of the Articles of Incorporation or the sale, lease, or exchange of all or substantially all of the property of the Association;
 - C. The designation of any such committee or the filling of the vacancies in the Board or in any such committee;
 - D. The amendment or repeal of these By-Laws or the adoption of new By-Laws; or
 - E. The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.
- 8.3 Other Committees. Other committees not having and exercising the authority of the Board in the management of the affairs of the Association may also be designated by a Board resolution. Such committees shall perform such duties and have such powers as may be provided in the resolution.

- 8.4 Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board designating the committee or with rules adopted by the Board.

ARTICLE IX: MERGER OR CONSOLIDATION

To the extent and in the manner provided by law, the Association may participate in mergers and consolidation with other nonprofit associations organized for the same purpose; provided, however, that any such merger or consolidation shall require approval by vote of two-thirds (2/3) of the Members at a meeting duly called for such purpose.

Upon merger or consolidation of the Association with another association or associations, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving Association pursuant to merger. The surviving or consolidated association may administer the existing property, together with the covenants, including without limitation, the maximum limits on assessments and dues of the Association, or any other matter subsequently affecting the interest of Members of the Association.

ARTICLE X: INDEMNIFICATION OF OFFICERS AND DIRECTORS

Neither Declarant, nor any Member of Declarant, nor any Member, nor the Board (individually or collectively), nor the Association, nor any Officers, Directors, agents, or employees of any of them, shall be personally liable for debts contracted for, or otherwise incurred by, the Association or for a tort of a Member, whether such Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their Directors, Officers, agents, Members, or employees, shall be liable for any incidental or consequential damages for failure to inspect the Lots, the Common Property, or any other portion of the Community or the Property comprising it, as described in detail in the Declaration, or any improvements thereon, or for failure to repair or maintain the same. Neither Declarant, the Association, nor any other person, firm, or association making such repairs or maintenance shall be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any portion of the subdivision Property, as described and defined in the Declaration, including any improvements thereon.

The Association shall, to the extent permitted by applicable law, indemnify, defend, and hold harmless all Members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action, or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action, or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify every Director, Officer, former Director, and former Officer of the Association, and any person who may have served at the request of the Association as a Director or Officer of another corporation, whether for profit or not-for-profit, against expenses (including attorney's fees) and liabilities actually and reasonably incurred by him or her in connection with the defense of, or as a consequence of, any threatened, pending, or completed action, suit, or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being or having been such Director or Officer, except in relation to matters as to which he or she shall be

adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, By-Law, agreement, vote of Members or any disinterested Directors, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, employee, or agent and shall inure to the benefit of the heirs, successors, assigns, executors, and administrators of such a person.

The Association shall undertake to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a Director, Officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, Officer, employee, or agent of the another corporation, partnership, joint venture, trust, or other enterprise, shall be reduced by any amounts such person may collect as indemnification: (a) under any policy of insurance purchased and maintained on his or her behalf by the Association or (b) from such other corporation, partnership, joint venture, trust, or other enterprise.

The provisions hereof shall be in addition to and not exclusive of any and all other rights to which any Director or Officer may otherwise be entitled under any law, By-Law, agreement, vote of Association Members or otherwise. In the event of death of any Officer or Director, the provisions hereof shall extend to such person's legal heirs, representatives, successors, and assigns. The foregoing rights shall be available whether or not such person or persons were, in fact, Directors or Officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit, or action is based on matters which antedate the adoption of these By-Laws.

Nothing contained in this Article, or in any provision of these By-Laws, shall operate to indemnify any Director or Officer if such indemnification is, for any reason, contrary to any applicable state or federal law.

ARTICLE XII: MISCELLANEOUS PROVISIONS

- 12.1 **Construction of By-Laws.** In the event of a conflict between the Declaration and the Articles of Incorporation or the By-Laws, the Declaration shall control. In the event of any conflict between the Articles of Incorporation and the By-Laws that the Declaration does not resolve, the Articles of Incorporation shall control. The Association, its Directors, and its Officers shall have all powers as set forth in the South Carolina Nonprofit Corporation Act of 1994 (hereinafter, the "Act"). In the event of a conflict between the Act and the By-Laws, the By-Laws shall prevail if such conflicted action is not prohibited by terms of the Act. If there is a conflict in the By-Laws which is not permitted by the Act, then the terms of the Act shall prevail.

12.2 Amendment. These By-Laws may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of any instrument executed by Members holding at least fifty-one (51%) percent of the Lots in the Community; provided, however, that so long as the Declarant is the Owner of any Lot affected by this Declaration, the Declarant's consent must be obtained. Any amendment to these By-Laws need not be recorded in the Charleston County RMC Office.

[SIGNATURES ON FOLLOWING PAGE]

CERTIFICATION

I, the undersigned, do hereby certify:

THAT we are the duly elected and acting Officers of the Association, and,

THAT the foregoing By-Laws constitute the original By-Laws of said The Pines at Gahagan Homeowners Association, Inc., as duly adopted at a meeting of the Board of Directors thereof, held on the 30th day of September, 2009.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 30th day of September, 2009.

THE PINES AT GAHAGAN HOMEOWNERS ASSOCIATION, INC.

BY: William John Marx

PRINTED NAME: William John Marx, its President

RECORDER'S PAGE



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Filed By:

WOODY LAW FIRM, LLC
 597 OLD MOUNT HOLLY RD.
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 GOOSE CREEK SC 29445

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