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MASTER DECLARATION OF COVENANTS, CONDITIONS AND

RESTRICTIONS

FOR

PALMETTO POINTE TOWNES COMMUNITY

BEAUFORT COUNTY SC- ROD

BK 03252 PGS 3227-3265

DATE: 07/01/2013 04:16:31 PM

INST # 2013037946 RCPT# 715753

NOTICE IS HEREBY GIVEN PURSUANT TO THE SOUTH CAROLINA UNIFORM  
ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH  
CAROLINA (1976 AS AMENDED) THAT THIS DECLARATION IS SUBJECT TO  
MANDATORY ARBITRATION.

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**MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
PALMETTO POINTE TOWNES COMMUNITY**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PALMETTO POINTE TOWNES COMMUNITY (hereinafter the "Declaration"), is made and entered into this 25<sup>th</sup> day of June, 2013, by REDUS SC HOUSING, LCC, Delaware limited liability company (hereinafter called "Developer").

**WITNESSETH:**

WHEREAS, Declarant is the owner of more than sixty-seven percent (67%) of the real property more particularly described in Exhibit A attached hereto, which is a residential single-family community known as **Palmetto Pointe Townes** (hereinafter the "Palmetto Pointe Townes Community"), located in Beaufort County, South Carolina, having acquired its interest in the same by Master's Deed (the "Master's Deed") issued in a mortgage foreclosure action filed in Beaufort County, South Carolina, as C. A. No. 2009-CP-07-3835 (the "Foreclosure Action"), against Portrait Homes – Palmetto Pointe LLC (hereinafter "Former Declarant"), et al., which Master's Deed was recorded May 21, 2010, in Book 2958, Page 2582, Office of the Register of Deeds for Beaufort County, South Carolina (the "Registry"); and

WHEREAS, Former Declarant imposed upon the Palmetto Pointe Townes Community that certain Declaration of Covenants, Conditions and Restrictions for Palmetto Pointe Townes recorded December 14, 2007, in Deed Book 2661, Pages 2551-2592A, said Registry (the "Original Declaration"); and

WHEREAS, Declarant acquired all of the Former Declarant's development and declarant rights under the Original Declaration by virtue of the Foreclosure Action and the Master's Deed; and

WHEREAS, Declarant desires to change the scheme of development of Palmetto Pointe Townes Community from one that is exclusively a single-family attached residential development, i.e., a townhome development, to one that is a mix of both single-family attached and detached residences; and

WHEREAS, Declarant, due to its ownership of Lots, comprises more than sixty-seven percent (67%) of the Lot Owners, and therefore has the sole right to amend the Original Declaration pursuant to Section Three of Article XII thereof, without the consent of any other Owners of or mortgagees holding liens on Lots; and

**NOTICE IS HEREBY GIVEN PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976 AS AMENDED) THAT THIS DECLARATION IS SUBJECT TO MANDATORY ARBITRATION.**

WHEREAS, in connection with its amendment of the Original Declaration as aforesaid, Declarant desires to impose upon the Palmetto Pointe Townes Community this new Declaration, covering all the Palmetto Pointe Townes Community and to create a new Master Palmetto Pointe Townes Homeowners Association, Inc. which will have control over and eventually own the Common Property described in the Original Declaration and in this Declaration; and

WHEREAS, Declarant desires to insure the attractiveness of the Palmetto Pointe Townes Community, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the appearance of all the Palmetto Pointe Townes Community; and to this end, desires to subject the real property shown upon the attached Exhibit A 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 said property described below, and each Owner and occupant thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation, protection and enhancement of the appearance in the community and to provide for the maintenance and upkeep of the exterior of all residential units, to affirm the previous creation of Palmetto Point Townes Homeowners Association, Inc., a South Carolina non-profit corporation, whose name is to be changed to "Palmetto Pointe Townes Townhome Owners Association, Inc.", an organization to which has been and will continue to be delegated and assigned the powers of maintaining the exterior of the residential units and all other improvements comprising the Palmetto Pointe Townes Townhomes which are the responsibility of the Palmetto Pointe Townes Townhome Association, Inc.

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values and amenities in said community and for the maintenance of the property and the improvements thereon, and to this end desires to subject the property described on Exhibit A. together with such additions as may hereafter be made thereto as provided in Article II hereof, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof, and

WHEREAS, for the efficient preservation of the values and amenities in said community, the Developer will incorporate under the laws of the State of South Carolina, Master Palmetto Pointe Townes Community Association, Inc. as a non-profit corporation and hereby delegates and assigns to it the powers of owning, maintaining and administering the community properties and facilities, administering and enforcing the terms and provisions contained herein, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the residents of Villages at Palmetto Pointe.

**NOW, THEREFORE,** in consideration of the foregoing and of the covenants and agreements hereinafter made, the Developer declares that the real property described in Exhibit A and such additions thereto as may hereafter be made pursuant to Article II hereof are and shall be held, developed, transferred, sold, conveyed, occupied and used subject to this Declaration and the covenants, conditions and restrictions, easements, charges and liens hereinafter set forth.



**ARTICLE I**  
**DEFINITIONS**

Section 1. "Association" shall mean and refer to Master Palmetto Pointe Townes Community Association, Inc., its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Builder" shall mean a person or entity to which Developer has sold an unimproved lot or lots for the purpose of constructing a residential dwelling thereon.

Section 4. "Common Area" shall mean all fixtures, real property and personal property owned by the Association for the common use and enjoyment of the Owners in the Common Areas, with respect to the property subject to this Declaration, shall be shown on the various plats of Palmetto Pointe Townes Community recorded or to be recorded in the said Registry and designated thereon as "Common Areas," but shall exclude all Lots as herein defined and all public streets shown thereon. "Common Area" shall include, but not limited to, the (i) completed permanent detention or retention pond(s); (ii) private water lines and sewer lines; (iii) all private streets shown on said plats as now recorded or shall be hereinafter recorded in the said Registry; (iv) sidewalks; (v) street lighting and (vi) pool amenity (recreational facilities). The Common Area to be owned by the Association at the time of the conveyance of the first Lot is more particularly shown on the plats of the Properties to be recorded in the Registry.

Section 5. "Declaration" shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this document, as may from time to time be amended.

Section 6. "Developer" shall both mean and refer to REDUS SC HOUSING, LLC, a Delaware limited liability company, and its successors and assigns, together with any successor to all or substantially all of the business of developing the Property. All rights of the Developer, as Developer, hereinafter set forth shall cease when it no longer has an interest in developing the property. Notwithstanding anything contained herein to the contrary, Developer may assign its rights as Developer hereunder by written assignment recorded in the Office of the Register of Deeds of Beaufort County, South Carolina.

Section 7. "Lot" shall mean and refer to any plot of land developed for residential use and shown upon any recorded subdivision map of the Property with the exception of the Common Areas as heretofore defined. The term shall also include a condominium, townhouse, patio home, single-family detached residential unit or other owned living unit within the Property.

Section 8. "Member" shall mean and refer to Members of the Association and shall include any Owner and the Developer.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but excluding those having such interest as security for the performance of an obligation.

Section 10. "Property" shall mean and refer to the real property described on Exhibit A which has hereby become subject to this Declaration, together with such other real property as may from time to time be annexed to said property under the provisions of Article II hereof.

Section 11. "Registry" shall mean and refer to the office of the Register of Deeds of Beaufort County, South Carolina.

## **ARTICLE II** **PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

Section 1. Existing Property. The real property which is and shall be held, developed, transferred, sold, conveyed, used and occupied subject to this Declaration is located in Beaufort County, South Carolina, and more particularly described on Exhibit A attached hereto and by reference made a part hereof.

Section 2. Additions to Existing Property. The Developer shall have the right to subject to this Declaration undescribed adjacent additional land so long as it does not increase the total size of the planned community by up to ten percent (10%) both in land size and in number of additional lots, and provided that not more than seven (7) years have elapsed since the filing of this Declaration and not more than five (5) years have elapsed since the last supplementary declaration which subjects any additional property to this Declaration.

Section 3. Replatting. Declarant shall have and hereby reserves the right, at any time or from time to time, to file a replat of all or any part of the Property owned by Declarant to effect a reconfiguration of any Lots in the Properties, subject to any necessary approval, joinder or consent of the appropriate county and/or municipal authorities.

## **ARTICLE III** **COMMON AREA**

Section 1. Obligation of the Association. The Association, subject to the provisions of this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with standards set by the Architectural Review Board.

## **ARTICLE IV** **PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right of use of the recreational facilities by an Owner: (1) during any period for which the Owner is



delinquent in the payment of applicable assessments; (2) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and (3) during any period that an Owner is otherwise in default of the Owner's obligations under this Declaration, including but not limited to the obligation to comply with the architectural control provisions and protective covenants and restrictions contained herein.

(c) The right of the Association to mortgage, dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members. No such mortgage, dedication, or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded;

(d) The right of Owners to the exclusive use of parking spaces as provided in this Article;

(e) The right of the Association to limit the number of guests of Members;

(f) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder;

(g) The right of the Association to adopt, publish, and enforce rules and regulations as provided in Article IX;

(h) The right of the Association or its representative to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice;

(i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate and shall not require prior notice; and

(j) The rights of the Declarant reserved in Article IX and Article X of this Declaration and the Special Declarant Rights.

Section 2. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area depicted on maps of the Properties to the Association, free and clear of all encumbrances and liens, except those encumbrances and liens set forth in this Declaration, utility easements, and storm drainage easements no later than at such time as Declarant ceases to have developer responsibilities for Palmetto Pointe Towns Community. Following conveyance of Common Area to the Association, Declarant shall be entitled to a prorata credit for all expenses of the Association incurred by Declarant (including insurance and real estate taxes), which have not theretofore been reimbursed to Declarant. The Common Area shall be conveyed without any express or implied

warranties, which warranties are hereby expressly disclaimed by Declarant. The Association shall accept and conveyance made according to the terms hereof.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Association may assign vehicle parking spaces for each Lot. The two automobile parking spaces for Lots having garages shall be the garage and the appurtenant driveway. No parking is permitted on the streets within the Properties except for temporary loading and unloading and brief visits. Owners hereby consent to and authorize the Association to tow any vehicle that is parked in violation of this Declaration or rules and regulations of the Association.

Section 4. TV Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the Members and may supply cablevision and the cost of these may be included in annual or special assessments.

Section 5. Delegation of Use. A Member's rights of enjoyment to the Common Area and facilities shall extend to the members of his or her family and to his or her guests, subject to such general regulations as may be established from time to time by the Association.

Section 6. Indemnification. The Association shall indemnify every officer, director, ARB member, and committee member against all damages, liabilities, and expenses, including reasonable attorney's fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limit under this Section, the Articles of Incorporation and South Carolina corporation law.

The officers, directors, ARB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise. except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, ARB members, and committee or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, ARB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, ARB member or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and directors' and officers liability insurance to fund this obligation, if such insurance is reasonably available.

## **ARTICLE V** **MEMBERSHIP, VOTING RIGHTS, AND PURPOSES**



Section 1. Membership in Association. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member(s) shall be the Declarant and shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when eighty-five percent (85%) of the Lots on the Properties are deeded to persons other than Declarant or Declarant's affiliate; or

(b) seven (7) years after the later of the following: the date this Declaration is recorded in the County Public Registry or the date any amendment adding additional real estate is recorded.

Section 3. Number of Directors; Declarant's Right to Appoint Board of Directors. There shall be at least three (3) Directors, one-third of whom shall be appointed by the board of directors of the Palmetto Pointe Townes Townhome Owners Association, Inc., or its successor (the "Townhome Owners Association"), representing the interests of the Owners of the single-family attached residential Lots affected by this Declaration. In the event the board of directors of the Townhome Owners Association fails or is unable for any reason to appoint one or more of those representatives to the Board of Directors of the Association, as aforesaid, the members of the Board of Directors then serving shall be entitled to appoint a Director or Directors to serve in the seats reserved hereunder to represent the Owners of the single-family attached Lots, which replacements are not required to be an Owner of a single-family attached Lot. Until the Class B Members are converted to Class A Members, Declarant is entitled to appoint all Board of Directors members, and the Association need not hold a meeting to elect Directors until conversion of the Class B Members.

Section 4. Association's Responsibilities. The Association shall have the right, exercisable in its exclusive discretion, to: (i) acquire, administer, maintain and care for the Common Area; (ii) establish, levy and collect assessments; (iii) engage contractors, vendors, employees or agents as it deems necessary to carry out all rights, duties and responsibilities; (iv) make payment to contractors, vendors, employees or agents for services provided in carrying out the purposes of the Association; (v) enforce this Declaration; and (vi) perform all rights, duties and responsibilities set forth in the Declaration, Articles and Bylaws of the Association.

**ARTICLE VI**  
**COVENANT FOR ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge on the Lots and shall be a continuing lien upon the Lots against which each such assessment is made. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them. If the Association should be dissolved or cease to exist, then in that event, every Owner of a Lot at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for: (1) the improvement, maintenance, repair, and reconstruction of the Common Areas, including landscaping and irrigation; (2) the maintenance, repair, and reconstruction of (a) private water and/or sewer lines (and any meters or lift stations associated therewith), (b) any pond (detention or retention), including the costs and expenses of under an easement agreement with the adjacent property owner (c) pool and pool house, (d) private streets, (e) street lights, driveways, entry monuments, perimeter fences, walks, and parking areas and such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish, or any other maintenance and (f) irrigation system; (3) the use and enjoyment of the Common Area, including, but not limited to, the cost of repairs, replacements, and additions; (4) the cost of labor, equipment, materials, management, and supervision; (5) the payment of taxes and public assessments assessed against the Common Area; (6) the procurement and maintenance of insurance in accordance with this Declaration; (7) the employment of attorneys to represent the Association when necessary; and (8) the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs of Common Property elements, paving, and any other major expense for which the Association is responsible; (9) provision of extermination services; (10) payment of costs for shared services that benefit the properties including shared detention ponds offsite; (11) flood insurance for those Lots in Flood Zone A, AE and V which shall be a common expense shared by all Lots; and (12) such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas, and those other portions of the Properties, which the Association may be obligated to maintain, and for unusual and unforeseen expenses of the Association. Such reserve fund is to be established, insofar as is practicable, out of annual assessments for common expense. Further, the reserve fund may be applied to operational deficits provided adequate reserves are maintained.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the date of recording of this Declaration in the Registry, the maximum annual assessment shall be Six Hundred and 00/100 (\$600.00) Dollars per Lot..



(a) From and after January 1 of the year immediately following the date of recording of this Declaration in the Registry, the maximum annual assessment may be increased by the Board of Directors effective January 1 of each year without a vote of Membership, but subject to the limitation that any such increase shall not exceed the greater of thirty percent (30%) or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for all cities over preceding twelve (12) month period which ended on the previous October 1.

(b) From and after January 1 of the year immediately following the date of recording of this Declaration in the Registry, or until increased as provided for in (b) or (c) below, whichever last occurs, the maximum annual assessment may be increased above the increase permitted in Section 4(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the monthly assessment at an amount which shall not exceed one-twelfth (1/12) of the maximum annual assessment.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year for the purpose of supplying adequate reserve funds for the replacement of capital improvements; for defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Area or upon a Lot, and in connection with exterior maintenance, including fixtures and personal property related thereto; for insurance costs of the Association; or for unusual, unforeseen and nonrecurring expenses of the Association, provided that any such assessment shall have the assent of the Board of Directors. Any special assessment affecting or benefiting only particular Lots shall be equitably apportioned, by the Board, among the Lots affected or benefited.

Section 6. Notice and Quorum for any Action Authorized Under Section Four. Written notice of any meeting called for the purpose of taking any action authorized under Section Four shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all similar Lots and shall be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each building on the day of the month on which the first Lot in such building is conveyed by Declarant, to a non-related entity for occupancy, except Declarant may elect not to pay any assessments whatsoever provided it funds

any deficiency in the operational budget of the Association. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Non-related entity means an entity, which is not owned, managed, or operated by any common individuals.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. A late charge of Twenty Five and No/100 Dollars (\$25.00) shall be added to any assessment not paid within fifteen (15) days after the due date, together with interest from the due date at eight percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and in either event: interest, costs, and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his or her Lot.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Working Capital Fund. At the time of closing of the sale of each Lot, a sum equal to at least two months' assessment for each Lot shall be collected and transferred to the Association for use as working capital. The purpose of said fund is to insure that the Association will have adequate cash available to satisfy expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid shall not be considered advance payment of monthly instalments of annual assessments.

Section 12. Default By Association: Upon default by the Association in the payment to the jurisdiction entitled thereto of any assessments for public improvements or ad valorem taxes levied against the Common Areas, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of Lots in the Properties. If the sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the Owner, his or her heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the Owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the Owner.

Section 13. Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:



(a) All properties to the extent of any easement or any interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) All Common Areas;

(c) All properties exempt from taxation by State and Local governments upon the terms and to the extent of such legal exemption;

Section 14. Exemption from Assessments for Property Owned by Developer or Builders. Developer and Builders may be exempt from annual assessments on unoccupied Lots only during the Class B membership provided and for so long as Developer and Builders shall fund all Association operating deficits. A Lot initially occupied or conveyed to an Owner other than the Developer and Builders shall be fully assessed. The obligation to fund budget deficits is a lien against all the land owned by the Developer and Builders, as appropriate, included within the Property.

## **ARTICLE VII** **ARCHITECTURAL CONTROL**

Section 1. The Architectural Review Board. An Architectural Review Board consisting of one (1) or more persons shall be appointed by the Developer. At such time as the Developer no longer has an interest in developing the Property, vacancies in the Architectural Review Board shall be filled by a majority vote of the remaining members of the Board.

Section 2. Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Common Property and only the single-family detached residential Lots, numbers 1 through 64 on the plat of the Property to be recorded, and of the improvements thereon in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. The Architectural Review Board shall promulgate standards and guidelines appropriate to the character of each increment, phase, or parcel of the Property, except for the single-family attached residential Lots identified on the recorded Plat of the Property. Such standards and guidelines shall be generally distributed among the Members.

Section 3. Conditions. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade, landscaping alterations, or other work which in any way alters the exterior of any structure or the improvements located on the Property, except for the single-family attached residential Lots, from its natural or improved state existing on the date such Property was first conveyed in fee by the Builder to an Owner or to the Association shall be made or done without the prior written approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence, satellite dish or signage shall be commenced, erected, maintained, improved, altered, made, or done without the prior written approval of the Architectural Review Board.

Section 4. Procedures. In the event the Board fails to approve, modify, or disapprove in writing an application within sixty (60) days after plans and specifications in writing have been submitted to it, in accordance with adopted procedures, approval will be deemed granted. At least a majority of the Members of the Architectural Review Board, either in person or by

telephone conference call, shall constitute a quorum. A majority vote of the Members of the Architectural Review Board shall be required for Architectural Review Board action.

## **ARTICLE VIII** **USE RESTRICTIONS**

**Section 1. Rules and Regulations for the Common Areas.** The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

**Section 2. Antennas and Satellite Dishes.** No outside radio transmission tower, receiving antenna, or satellite dish shall be erected by an Owner within the Properties without the prior written approval of the Architectural Control Committee.

**Section 3. Quiet Enjoyment.** No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

**Section 4. Dwelling Size.** The total square footage of the main structure located on a Lot, exclusive of one-story open porches and garages, shall not be less than 1,000 square feet.

**Section 5. Nuisances.** No activity deemed noxious or offensive by the Architectural Control Committee or the Board shall be carried on upon any Lot or within the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Architectural Control Committee or Board. Examples of such offensive activities shall include, but to be limited to, the origination or emission of any loud or disturbing noise or vibrations; the maintenance of an auto repair site, the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards; or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the community. The Architectural Control Committee or the Board of Directors may establish reasonable rules and regulations for enforcing the provisions of this Section Five.

**Section 6. Parking of Vehicles and Use of Property.** No commercial vehicle, house trailer, boat, boat trailer, camper, tent, shed, or any other such vehicle, trailer, vessel or temporary structure shall be permitted to be parked or placed within the Properties except within area(s) which may be specifically designated for such purposes by the Association; provided, however, commercial vehicles, temporary buildings and other structures shall be permitted during the construction period by Declarant or as a temporary real estate sales office or construction office of Declarant. No parking is permitted on the streets within the Properties except for temporary loading and unloading and brief visits. The Lot shall be used for residential purposes. No garage, outbuilding, or other appurtenant structure shall be used for residential purposes, either temporarily or permanently, nor shall any portion of the Property (except as expressly stated in the preceding sentence) be used except for residential purposes and for purposes incidental or necessary thereto. Home offices shall be allowed provided it does not



create any traffic other than Owners and Occupants within the Properties. "Residential purposes" means residing in a Lot for any period of time.

Section 7. Signs and Visible Areas. With the exception of signs erected by Declarant pursuant to Article X hereof, no sign of any kind whatsoever shall be erected upon or displayed or otherwise exposed to view on any Lot or any improvement thereon without the prior written consent of the Board of Directors of the Association. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except inoffensive drapes or curtains) or placed on the outside walls of a Lot or otherwise outside of a Lot, or any part thereof, and no sign (except those of the Declarant), awning, canopy, shutter, or television or citizen's band or other radio antenna or transmitter, satellite dish or any other device or ornament shall be affixed to or placed on the exterior walls or roof or any part thereof, or in or on a patio or balcony unless authorized by the Board, and subject to the rules and regulations as the Board may adopt from time to time.

Section 8. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided, however, dogs, cats or other household pets may be kept, not to exceed the total allowed under the applicable animal control laws and ordinances of Beaufort County, South Carolina, or other controlling governmental entity (Animal Control Laws").

Section 9. Control of Pets. Every person owning or having possession, charge, care, custody or control of any dog, cat or other uncaged pet shall keep such pet exclusively inside his own residential unit or inside the confines of such Owner's Lot; provided, however, that such pet may be off the Owner's Lot if it be under the control of a competent person and restrained by a chain, leash or other means of adequate physical control if such freedom from restraint is allowed by the applicable Animal Control Laws. All Owners must control their pets at all times, whether or not such Owner is present, in a manner that will prevent any pet or its Owner from being in violation of the applicable Animal Control Laws.

Section 10. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, and all trash, garbage or other waste shall be stored in sanitary containers in accordance with the rules and regulations of any health or public safety authority having jurisdiction over the property. The sanitary containers shall only be placed outside at the earliest the evening before garbage pickup day and shall be immediately returned inside an enclosed area after garbage has been picked up. All incinerators or other equipment shall be kept in a clean and sanitary condition. No trash, garbage, or other waste may be placed within the Common Area, except in containers approved by the Board of Directors.

Section 11. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot or within the Common Area. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or within the Common Area.

Section 12. Storage. No household furnishings, equipment, lawn furniture or related personal property, including children's' play objects, grills, bicycles, and lawn ornaments of the Owner shall remain outside the residential unit or garage overnight, meaning it must all be



removed from the front yards, front porches and placed out of the view of the public. Reasonable arrangements of seasonal flower pots and hanging baskets are permitted.

Section 13. Fines and Penalties. The Association, by the Board of Directors, may impose fines and penalties for any violation of this Declaration or this Article. The Owners and Members consent to the Board making such determination and the assessment of a \$50.00 per day fine for violations of the Declaration, Bylaws, Articles of Incorporation, and Rules and Regulations and consent to the Association recording a lien against the Owner's or Member's Lot to collect such fines. The following procedure shall govern the imposition of fines: (i) the Association shall give written Notice of Violation of the Declaration, Bylaws, Articles of Incorporation, and Rules and Regulations adopted by the Board of Directors; (ii) if the Owner or Member does not respond within ten (10) days of receipt of the Notice of Violation, the Owner or Member shall be deemed to have agreed with such determination; (iii) if the Owner or Member objects to such Notice of Violation, it shall provide all written evidence as to why such act or omission does not constitute a violation of the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations within ten (10) days of receipt of the Notice of Violation; (iv) the Board shall consider all written evidence submitted by the Owner or Member and shall make a final determination thereon within fifteen (15) days of receipt of the Owner's or Member's written material; (v) the Association, through the Board of Directors, shall respond to an Owner's or Member's objection in writing with a final determination on the issue; (vi) if the Owner or Member does not adhere to the Association's initial determination or final determination, if applicable, the Association shall be entitled to levy a fine and immediately record a lien therefore against the Owner or Member, not exceeding \$50.00 per day for as long as the violation of Declaration, Bylaws, Articles of Incorporation or Rules and Regulations continue. Upon the thirtieth (30th) day after recording a lien, the Association shall be entitled to initiate foreclosure proceedings against the Owner if the fines have not been fully paid.

Section 14. Rules and Regulations Concerning the Use of the Lot. Rules and Regulation concerning the use of the Lots may be promulgated by the Association acting by and through its Board of Directors, each of which shall be deemed to be incorporated herein by reference and made a part thereof, as amended from time to time. The Association shall deliver such rules and regulations to Owners prior to the time that they become effective. The rules and regulations promulgated from time to time shall be deemed to be reasonable and enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of the Owners, and in furtherance of a plan to provide for the congenial occupation of the Lots, to promote and protect the cooperative aspects of ownership, the value of the Lots and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community. The board of directors of the Association is hereby granted specific power and authority to enforce said rules and regulations.

## **ARTICLE IX** **EASEMENTS**

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone, and electric power line and other public utilities as shall be established by the Declarant or by its predecessors in title; further, the Association shall have the

power and authority to grant and establish upon, over, under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress, and regress across all Common Areas, now or hereafter owned by the Association, for the purpose of construction of improvements within the Properties, including the right of temporary storage of construction materials on said Common Areas.

So long as Declarant owns any property described on Exhibit "A", Declarant reserves blanket easements and the right to grant such specific easements over all the Properties, including Lots and Common Areas, as may be necessary in conjunction with the orderly development of the property described on Exhibit "A" or any adjacent property (including without limitation the planning, construction, marketing, leasing, management and maintenance of improvements) for use, enjoyment, access, construction and maintenance of public or private utilities and storm drainage (whether subsurface or surface). No such easements may be located within the area beneath any building located thereon.

All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves and walls.

Declarant reserves access easements over all Lots for construction, either for that Lot or any adjacent property and easements for the installation of public or private utilities and storm drainage (whether subsurface or surface). There are reserved cross-easements in favor of Owners of Lots that comprise a building for access to and from each other Lot comprising the building and the Common Area adjacent to the Lots comprising the building, including, but not limited to the transportation of rollout garbage containers; however, this does not include access to approved decks, patios or areas with approved fences.

#### **ARTICLE X** **DECLARANT'S RIGHTS**

The right is reserved by Declarant, or its agents, to place and maintain on the Properties all model homes, sales offices, advertising signs and banners and lighting in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Declarant. There is also reserved unto Declarant, its agents and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Properties for such sales purposes. Declarant also reserves the right to maintain on the Properties without charge (a) a general construction office for Declarant's contractors and (b) appropriate parking facilities for the employees of Declarant's agents and contractors. Notwithstanding any other provision to the contrary, no annual or special assessment shall be due for any models of the Declarant.

Notwithstanding any provision herein to the contrary, the rights and easements created under this Declaration are subject to the right of Declarant to execute all documents and do all other acts and things affecting the Properties, which in the Declarant's opinion, are required to implement any right of Declarant set forth in this Declaration (including the making of any



dedications or conveyances to public use) provided any such document or act is not inconsistent with the then existing property rights of any Owner. Notwithstanding any provision to the contrary, Declarant reserves the right and power, and each Owner by acceptance of a deed to a Lot is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Lot and is irrevocable (except by Declarant), without the consent, approval or signature of each Owner, to (i) amend the Declaration and all attachments, to the extent necessary to confirm to the requirements then governing the purchases or insurance of mortgages by The Mortgage Corporation, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, (ii) induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lot ownership, (iii) to correct typographical errors, surveyor errors in descriptions or otherwise, or obvious factual errors or omissions, the correction of which would not impair the interest of any Owner or mortgagee, (iv) bring this Declaration into compliance with South Carolina law, (v) to amend any Exhibits, (vi) to exercise any Special Declarant Rights or development rights; or (vii) to amend this Declaration in any manner which does not materially affect an Owner's use and enjoyment of his or her Lot; and further provided that if there is an Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record any of the foregoing amendments. The rights of Declarant under this Section shall terminate at such time as Declarant no longer holds or controls title to a Lot and the right of Declarant to add the Additional Property has expired.

## **ARTICLE XI**

### **DISPUTE RESOLUTIONS AND LIMITATIONS ON LITIGATION**

Section 1. Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, Owners and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section Two, shall be resolved using the procedures set forth in Section Three in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section 2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section Three;



(a) Any suit by the Association against any Bound Party to enforce the provisions of Article V (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VII (Architectural Control) and Article IX (Use Restrictions); and

(c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of South Carolina in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00.

Section 3. Mandatory Procedures for All Other Claims. A All claims other than Exempt Claims, including all disputes pertaining to the purchase, construction and maintenance of the units, including express and implied warranties, to the extent that such warranties exist and have not otherwise been waived by the Owner, shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a claim ("Claimant") against any other Bound Party ("respondent"), other than an Exempt Claim, shall notify each respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

- (1) The nature of the Claim, including date, time, location, persons involved and respondent's role in Claim;
- (2) The basis of the Claim ("Claimant") (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the claim arises);
- (3) What Claimant wants Respondent to do or not to do to resolve the Claim;
- (4) The 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.

(b) Negotiation.

- (1) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good negotiation.
- (2) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

- (1) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the same geographical area upon which the Parties may mutually agree.
- (2) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
- (3) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.
- (4) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand (“Settlement Demand”) to the Respondent. The Respondent shall make a formal written settlement offer (“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

(d) Final and Binding Arbitration. Any and all claims, disputes and controversies by and between the Declarant, Association and/or Owners or any combination thereof arising from or related to the Properties (including Lots and Common Areas), any improvements to the Properties, the sale of any part of the Properties, including, without limitation, any claim of breach of contract or warranty, negligence, negligent or intentional misrepresentation or non disclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of Construction Arbitration Services, Inc. (“CAS”), American Arbitration Association (“AAA”), or DeMars & Associates, Ltd. (“DeMars”) in effect at the time of the request for arbitration or by such other arbitration service as Declarant shall, in its sole discretion select, and pursuant to the rules of that



arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of, and be enforceable by all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or void ability for any cause, the scope of arbitrable issues and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement, and notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator's compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC § 1 *et seq.*) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

#### Section 4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section Three (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section Three (c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section Three (c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection Section Four (c).

(c) Any Award, which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall

also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

**Section 5. Enforcement of Resolution.** If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section Three and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section Three, in such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

**Section 6. Commencement of Litigation.** (i) Any litigation by the Association other than the "Exempt Claims" set out in Section Two or (ii) any arbitration against the Declarant shall both require an affirmative vote of seventy five percent (75%) of the Members of the Association prior to the institution of such action. Notwithstanding any other provision herein to the contrary, under no circumstances shall the Association be entitled to file any lawsuit against the Declarant, but any action against the Declarant shall be pursuant to arbitration as set forth in this Declaration. The Association and Owners agree to give the Declarant written notice of any claim or defect in the Properties, and further grant the Declarant a sixty (60) day period within which to investigate the claim or defect and respond to the Association and/or Owners, prior to requesting arbitration.

## **ARTICLE XII** **GENERAL PROVISIONS**

**Section 1. Enforcement.** The Declarant, Association, or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land perpetually. Except as provided herein, this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners. No amendment in any circumstance may alter, amend, or eliminate any right, privilege, or benefit of Declarant, and further no amendment relating to the maintenance, repair, replacement and ownership of the permanent ponds on the Properties shall be permitted without the review and approval by the governmental office having jurisdiction for watershed protection.

**Section 4. Management and Contract Rights of Association.** Declarant shall enter into a contract with a management company or manager for the purposes of providing all elements of



the operation, care, supervision, maintenance, and management of the Properties. Declarant contemplates that the initial manager may be the Declarant or a firm affiliated with the Declarant. The initial Board of Directors of the Association shall ratify and approve the management contract, which will provide for such manager or management company to act as a managing agent for the Association with respect to the Properties at a rate equal to the greater of: (i) Fourteen Dollars (\$14.00) per month for each Lot that has become subject to an assessment by the Association under Article V, Section Eight of this Declaration, or (ii) Four Hundred Dollars (\$400.00) per month. Any such contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract, without justification or penalty, upon sixty (60) days notice.

Section 5. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot ("Mortgage Holder") will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representation to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the Owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

Section 6. Notices. Any notice required or desired to be given under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the last known Mortgage Holder or other party entitled to notice, at the last known address for each such party, all as shown on the books and records of the Association at the time such notice is given.

Section 7. Exculpation. It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against Declarant or any of its officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively the Declarant Related Parties) for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against the Declarant or any related parties.

Section 8. Conflict with South Carolina law; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of South Carolina law, the provisions of South Carolina law shall control unless South Carolina law permits the Declaration to override South Carolina law, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the

rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section 9. Disclaimer of All Warranties. Declarant and Developer hereby disclaim and exclude any and all warranties, expressed or implied (including, without limitation, any implied warranty of habitability, merchantability, quality or fitness for particular purpose), with respect to the Properties, Common Area and the Lots. The Association and any Lot Owner knowingly agree to waive any and all rights that they may have pursuant to the implied warranty of habitability. The Association and Lot Owners acknowledge and agree that the sole warranties that apply to the Properties, Common Area and the Lots are solely contained within the purchase agreement for the acquisition of the Lots.

Section 10. Disclaimer of Other Entities. Owners and the Association acknowledge and understand that their relationship is with the Declarant pursuant to the written terms of this Declaration, and no other entity notwithstanding anything to the contrary in advertising, promotional or other materials. Owners and the Association acknowledge that they have no claim against any entity including affiliates, subsidiaries, parents or otherwise under common control of Declarant, and Owners and the Association waive and release any such claims, if any.

Section 11. Assignments by Declarant. All rights which are specified by this Declaration to be the rights of the Declarant are assignable, mortgageable, pledgeable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of the Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liabilities for the acts of any other party which previously exercised or subsequently shall exercise such rights.



IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its corporate name and its corporate seal to be hereunto affixed, by authority of its Board of Directors, the day and year first above written.

**REDUS SC HOUSING, LLC**

By: Jill Marie Tart  
Its: Asst Vice President

REDUS SC Housing, LLC  
a Delaware Limited Liability Company  
By: REDUS Properties, Inc. its Member  
and a Delaware Corporation  
By: Jill Marie Tart / Assistant Vice President

Kimberly Vizzini Strickland  
Signature of Witness #1 Kimberly Vizzini-Strickland

Caray Young  
Signature of Witness #2

STATE OF Florida SS:  
COUNTY OF Duval

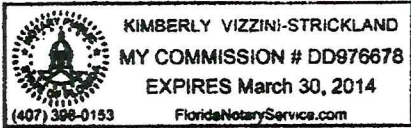
I, Kimberly Vizzini Strickland a Notary Public in and for said City and State do hereby certify that Jill Marie Tart personally appeared before me this day and acknowledged and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its Asst President.

Witness my hand and official seal, this 25 day of June, 2013.

Kimberly Vizzini Strickland  
Notary Public  
My Commission Expires: \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Kimberly Vizzini Strickland  
Notary Public  
County of \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



## EXHIBIT A

### LEGAL DESCRIPTION

All that certain piece, parcel or tract of land situate, lying and being in the town of Bluffton, Beaufort County, South Carolina, containing 16.747 acres, more or less, as shown on that certain survey prepared by Coastal Surveying Co., Inc., certified by Michael R. Dunigan, S.C.P.L.S. # 11,905, entitled "An A.L.T.A. I A.C.S.M. Land Title Survey of 16.747 Acres on Hwy #46," dated August 28, 2006, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 119, Page 90, and being more particularly shown and described as follows: Beginning at a found iron pin in the north right-of-way of South Carolina Highway #46 and being South 62°12'04" East, a distance of 23.83 feet and South 73°27'40" East, a distance of 2381.82 feet from the intersection of the eastern right-of-way of South Carolina Highway # 170 and the northern right-of-way of aforesaid Highway #46, said iron pin has the state plane coordinates of N 148,323.92 and E 2,006,829.79 and is shown as the southwest corner of Parcel 386, as shown on P.B. 105, Page 155 of the Beaufort County, South Carolina Recorder's Office; thence North 16°33' 36" East, a distance of 1088.44 feet to a point; thence South 72°58' 51" East, a distance of 157.61 feet to a point; thence South 17°01' 09" West, a distance of 129.98 feet to a point; thence South 72°58'51" East, a distance of 566.44 feet to a point; thence South 04°39'51" East, a distance of 37.35 feet to a point; thence along a curve, deflecting to the right, a distance of 53.03 feet, having a radius of 1066.00 feet, a chord bearing of South 02°53' 13" East and a chord of 53.02 feet to a point; thence North 73°32' 10" West, a distance of 12.43 feet to a point; thence South 16°27' 50" West, a distance of 867.79 feet to a point in the north right-of-way of aforesaid Hwy. #46; thence North 73°26'24" West, a distance of 743.18 feet to the Point of Beginning.

Reference is hereby made to the aforesaid plat and to the record thereof for all purposes of description and identification and for all other purposes allowed by law.

This being the same property conveyed to Portrait Homes - Palmetto Pointe, LLC by deed of Palmetto Pointe Developers, LLC, to be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, simultaneously herewith.

TMS#: p/o R610-036-000-0454-0000