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**DECLARATION**

**OF**

**COVENANTS, CONDITIONS**

**AND RESTRICTIONS**

**FOR**

**THE FARM AT BUCKWALTER**

**BLUFFTON**

**SOUTH CAROLINA**

**TABLE OF CONTENTS**

**DEFINITIONS** ..... - 1 -

1.1. “Area of Common Responsibility” ..... - 1 -

1.2. “Association” ..... - 1 -

1.3. “Board of Directors” or “Board” ..... - 1 -

1.4. “Bylaws” ..... - 1 -

1.5. “Common Property” ..... - 2 -

1.6. “The Farm at Buckwalter” ..... - 2 -

1.7. “The Farm at Buckwalter Standards” ..... - 2 -

1.8. “Declarant” ..... - 2 -

1.9. “Declaration” ..... - 2 -

1.10. “Lot” ..... - 2 -

1.11. “Mortgage” ..... - 2 -

1.12. “Mortgagee” ..... - 2 -

1.13. “Occupant” ..... - 2 -

1.14. “Owner” ..... - 2 -

1.15. “Person” ..... - 2 -

1.16. “Supplementary Declaration” ..... - 2 -

1.17. “Total Association Vote” ..... - 2 -

SECTION 2

**PROPERTY SUBJECT TO THIS DECLARATION** ..... - 3 -

2.1. Property Subjected To This Declaration ..... - 3 -

2.2. Other Property ..... - 3 -

SECTION 3

**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS** ..... - 3 -

3.1. Membership ..... - 3 -

3.2. Voting Rights ..... - 3 -

3.3. Association Board ..... - 4 -

SECTION 4

**ASSESSMENTS** ..... - 4 -

4.1. Purpose of Assessment ..... - 4 -

4.2. Creation of the Lien and Personal Obligation for Assessments and Fines ..... - 4 -

4.3. Late Charges ..... - 4 -

4.4. Personal Liability ..... - 4 -

4.5. Accounting of Payment ..... - 4 -

4.6. Annual Assessments ..... - 5 -

4.7. Computation of Annual Assessments ..... - 5 -

4.8. Special Assessments ..... - 5 -

4.9. Initiation Fees . . . . . - 5 -  
 4.10. Lien for Assessments and Fines . . . . . - 6 -  
 4.11. Priority . . . . . - 6 -  
 4.12. Effect of Nonpayment of Assessment or Fine . . . . . - 6 -  
 4.13. No Set Off or Deduction . . . . . - 6 -  
 4.14. Application of Payments . . . . . - 6 -  
 4.15. Date of Commencement of Assessments . . . . . - 6 -  
 4.16. Specific Assessment . . . . . - 7 -  
 4.17. Transfer Fee Due Upon Lot Resales . . . . . - 7 -  
 4.18. Budget Deficits During Declarant Control . . . . . - 7 -

SECTION 5

**MAINTENANCE & CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION** . . . . . - 8 -  
 5.2. Owner's Responsibility . . . . . - 10 -  
 5.3. Conveyance of Common Property by Declarant to Association- 10 -  
 5.4. Security. . . . . - 10 -

SECTION 6

**USE RESTRICTIONS AND RULES** . . . . . - 11 -  
 6.1. General . . . . . - 11 -  
 6.2. Fines for Covenant, Rule and Regulation Violations. . . . . . - 12 -  
 6.3. Single Family Residential Use of Lots . . . . . - 12 -  
 6.4. Signs. . . . . . - 12 -  
 6.5. Boats, Trailers, Etc. . . . . . - 12 -  
 6.6. Unlicensed Vehicles . . . . . - 13 -  
 6.7. Trucks/Campers. . . . . . - 13 -  
 6.8. Off Road. . . . . . - 13 -  
 6.9. Leasing. . . . . . - 13 -  
 6.10. Occupants Bound. . . . . . - 13 -  
 6.11. Animals and Pets. . . . . . - 13 -  
 6.12. Nuisance . . . . . - 13 -  
 6.13. Antennas. . . . . . - 13 -  
 6.14. Tree Removal. . . . . . - 14 -  
 6.15. Drainage. . . . . . - 14 -  
 6.16. Sight Distance at Intersections . . . . . - 14 -  
 6.17. Garbage Cans, Woodpiles, Etc. . . . . . - 14 -  
 6.18. Subdivision of Lot . . . . . - 14 -  
 6.19. Guns. . . . . . - 14 -  
 6.20. Fences. . . . . . - 14 -  
 6.21. Air Conditioning Units. . . . . . - 14 -  
 6.22. Lighting . . . . . - 14 -  
 6.23. Swimming Pools. . . . . . - 15 -

6.24. Play Equipment ..... - 15 -  
 6.25. Mailboxes ..... - 15 -  
 6.26. Exteriors ..... - 15 -  
 6.27. Clothesline ..... - 15 -  
 6.28. Storage Sheds and Garages ..... - 15 -  
 6.29. Water Conservation ..... - 15 -

SECTION 7

**ARCHITECTURAL REVIEW BOARD** ..... - 15 -  
 7.1. Architectural Standards for Improvements to Lots ..... - 15 -  
 7.2. Architectural Review Committee ..... - 15 -  
 7.3. Operations of the Architectural Review Board ..... - 16 -  
 7.4. Inspection Rights ..... - 17 -  
 7.5. Violations ..... - 17 -

SECTION 8

**INSURANCE AND CASUALTY LOSSES** ..... - 18 -  
 8.1. Insurance on Common Property ..... - 18 -  
 8.2. Liability Insurance ..... - 18 -  
 8.3. Other Insurance ..... - 18 -  
 8.4. Declarant ..... - 18 -  
 8.5. Premiums ..... - 18 -  
 8.6. Miscellaneous ..... - 19 -  
 8.7. Individual Insurance for Lot Owners ..... - 19 -  
 8.8. Damage and Destruction -- Property Insured by Association - 20 -  
 8.9. Damage and Destruction to Improvements on Lots -- Insured by Owners ..... - 20 -  
 8.10. Insurance Deductible ..... - 21 -

SECTION 9

**ANNEXATION OF ADDITIONAL PROPERTY** ..... - 21 -  
 9.1. Unilateral Annexation By Declarant ..... - 21 -  
 9.2. Other Annexation ..... - 21 -

SECTION 10

**MORTGAGEE PROVISIONS** ..... - 22 -  
 10.1. Mortgagee Provisions ..... - 22 -  
 10.2. Notices of Action ..... - 22 -  
 10.3. No Priority ..... - 22 -  
 10.4. Notice to Association ..... - 22 -  
 10.5. Applicability of Section ..... - 22 -

SECTION 11

**EASEMENTS** ..... - 22 -

11.1. Easements for Use and Enjoyment ..... - 22 -

11.2. Easements for Utilities ..... - 23 -

11.3. Easement for Drainage ..... - 23 -

11.4. Easement for Entry ..... - 24 -

11.5. Easement for Maintenance ..... - 24 -

11.6. Easement for Entry Features ..... - 24 -

11.7. Construction and Sale Period Easement ..... - 24 -

11.8. Irrigation Easements ..... - 25 -

11.9. Fence Easement ..... - 25 -

SECTION 12

**GENERAL PROVISIONS** ..... - 25 -

12.1. Enforcement ..... - 25 -

12.2. Self-Help ..... - 26 -

12.3. Condemnation ..... - 26 -

12.4. Duration ..... - 26 -

12.5. Amendment ..... - 26 -

12.6. Partition ..... - 27 -

12.7. Gender and Grammar ..... - 27 -

12.8. Severability ..... - 27 -

12.9. Captions ..... - 27 -

12.10. Perpetuities ..... - 27 -

12.11. Indemnification ..... - 27 -

12.12. Books and Records ..... - 28 -

    12.12.1. Inspection by Members and Mortgagees .. - 28 -

    12.12.2. Rules for Inspection ..... - 28 -

    12.12.3. Inspection by Directors ..... - 28 -

12.13. Financial Review ..... - 28 -

12.14. Notice of Sale, Lease or Acquisition ..... - 28 -

12.15. Agreements ..... - 29 -

12.16. Implied Rights ..... - 29 -

12.17. Variances ..... - 29 -

12.18. Litigation ..... - 29 -

EXHIBIT "A" ..... - 31 -

    Property Subject to this Declaration ..... - 31 -

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
THE FARM AT BUCKWALTER**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** ("Declaration") is made on this 17 day of January, 2002, by D.R. Horton, Inc., a South Carolina corporation, having an address of P.O. Box 351, Bluffton, SC 29910, South Carolina 29928 (the "Declarant"):

**WHEREAS**, Declarant is the owner of real property generally known as The Farm at Buckwalter in Bluffton, Beaufort County, South Carolina, which is more particularly described on Exhibit "A"; and

**WHEREAS**, Declarant is developing The Farm at Buckwalter as a residential community and wishes to submit The Farm at Buckwalter to the provisions of this Declaration.

**NOW THEREFORE**, Declarant hereby declares that the real property described on Exhibit "A" of this Declaration generally known as The Farm at Buckwalter, including any improvements which may be constructed on The Farm at Buckwalter, is subjected to the provisions of this Declaration. All property within The Farm at Buckwalter shall be held, sold, transferred, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens contained in this Declaration. The provisions of this Declaration shall run with all the property within The Farm at Buckwalter and subject all that property to this Declaration. This Declaration shall benefit, and be binding upon, all persons having any right, title, or interest in any portion of The Farm at Buckwalter, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

**DEFINITIONS**

The following words used in this Declaration shall have the following meanings:

- 1.1. **"Area of Common Responsibility"** shall mean the Common Property, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration as may be amended and any recorded plat.
- 1.2. **"Association"** shall mean The Farm at Buckwalter Homeowners' Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.
- 1.3. **"Board of Directors"** or **"Board"** shall mean the appointed or elected board of directors, as applicable, of the Association.
- 1.4. **"Bylaws"** shall refer to the Bylaws of the Association.

- 1.5. "Common Property" shall mean the real property, if any, together with improvements located thereon, which is depicted as Common Property, open space, or recreation area on any plat of The Farm at Buckwalter recorded in the Beaufort County Register of Deeds Office.
- 1.6. "The Farm at Buckwalter" shall mean the real property and interests described on Exhibit "A", generally known as The Farm at Buckwalter and such additions to that real property as may be made by Declarant or by the Association pursuant to this Declaration.
- 1.7. "The Farm at Buckwalter Standards" shall mean the standard of conduct, maintenance, or other activity generally prevailing in The Farm at Buckwalter. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination must be consistent with The Farm at Buckwalter Standards originally established by the Declarant.
- 1.8. "Declarant" shall mean D.R. Horton, Inc., a South Carolina corporation. The Declarant may appoint and designate a successor Declarant by designating such appointment or designation in a Supplemental Declaration filed in the Beaufort County Register of Deeds Office.
- 1.9. "Declaration" shall include this Declaration and any Supplemental Declaration.
- 1.10. "Lot" shall mean any single family residential lot of land within The Farm at Buckwalter, whether or not improvements are constructed on that land, which constitutes a single-family dwelling site as shown on a plat recorded in the Beaufort County Register of Deeds Office. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property and membership in the Association.
- 1.11. "Mortgage" shall mean any mortgage used for the purpose of encumbering real property in The Farm at Buckwalter as security for the payment or satisfaction of an obligation.
- 1.12. "Mortgagee" shall mean the holder of a Mortgage.
- 1.13. "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within The Farm at Buckwalter for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- 1.14. "Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot, excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- 1.15. "Person" shall mean a natural person, corporation, limited liability company, partnership, association, trust, or other legal entity.
- 1.16. "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional restrictions and obligations on The Farm at Buckwalter or adds additional land to The Farm at Buckwalter or assigns the Declarant's rights under this Declaration.
- 1.17. "Total Association Vote" means all of the votes attributable to members of the Association. If the Total Association Vote is taken during a time while Declarant has the right to appoint members of the Board of Directors, a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved.

**SECTION 2**  
**PROPERTY SUBJECT TO THIS DECLARATION**

2.1. Property Subjected To This Declaration. All real property in The Farm at Buckwalter is subject to the covenants and restrictions contained in this Declaration, and all such real property is described in Exhibit "A".

2.2. Other Property. Only the real property described in Exhibit "A" is made subject to this Declaration. However, Declarant may subject additional property to this Declaration by recording one or more Supplementary Declarations.

**SECTION 3**  
**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

3.1. Membership. Every Owner shall be deemed to have a membership in the Association. If a Lot is owned by more than one Person, there shall be only one (1) membership per Lot, and the votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office in the Association, may be exercised by a Member or the Member's written designee, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

3.2. Voting Rights. The Association shall have two classes of membership: Class A and Class B.

Class A. Every person who is an Owner, with the exception of the Declarant, shall be a Class A Member and shall be entitled to one vote for each Lot owned. When more than one Person is a Class A Member by virtue of joint ownership in the same Lot, 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. In the event of a voting disagreement among joint Owners and an attempt by two or more of them to cast different vote for their Lot, or more than one vote for their Lot, such joint Owner shall not be recognized and the vote of such Lot shall not be counted. The membership of a Class A Member shall automatically terminate upon the Member's sale of its Lot. However, no termination of Class A membership shall affect such Member's obligation to pay assessments, fines or penalties as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled in all Association matters to one (1) vote for

each Lot it owns, plus one (1) vote for each Lot owned by a Person other than the Declarant. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the date that all the Lots in The Farm at Buckwalter have been conveyed by the Declarant to an individual Owner or Owners for residential occupancy; or (b) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed by the Declarant and recorded in the Register of Deeds Office of Beaufort County. If the latter option is exercised by Declarant, at the time of termination of the Class B membership Declarant shall be deemed to be a Class A Member.

3.3. Association Board. As long as the Declarant owns one or more Lots in The Farm at Buckwalter, Declarant shall have the power to appoint a majority of the Board of Directors of the Association.

#### **SECTION 4 ASSESSMENTS**

4.1. Purpose of Assessment. The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots.

4.2. Creation of the Lien and Personal Obligation for Assessments and Fines. Each Owner shall timely pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration. Each Owner also agrees to pay to the Association reasonable fines as may be imposed in accordance with the terms of this Declaration.

4.3. Late Charges. All assessments shall accrue late charges and shall accrue interest not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due. Additionally, the costs of collection shall be added to any amount due, which costs of collection shall include, without limitation, reasonable attorney's fees, filing fees, and court costs incurred by the Association. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due.

4.4. Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings.

4.5. Accounting of Payment. The Association shall, within ten (10) business days after receiving a written request, furnish a written accounting setting forth whether the assessments on a specified Lot have been paid. Such written accounting shall be binding upon the Association as

of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this accounting.

4.6. Annual Assessments. Annual assessments shall be levied on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board. Annual assessments need not be levied equally on all Lots, and the Board shall have the reasonable discretion to assess Lots within certain areas of The Farm at Buckwalter differently than Lots in other areas, so long as such differences are rationally based on the costs of maintaining amenities and/or Common Property exclusively available to identifiable areas within The Farm at Buckwalter. The Board may allow annual assessments to be paid in periodic payments, and the Board shall have the right to accelerate any unpaid annual installment in the event an Owner is delinquent in a periodic payment. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

4.7. Computation of Annual Assessments. Starting with the 2004 calendar year budget, The Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve account funding. The Board shall cause the coming year's budget and the assessments to be mailed or delivered to each Member at least thirty (30) days prior to the end of the then current calendar year, or shall present the budget and the proposed assessment to the Members at the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. In the event the membership disapproves the proposed budget and/or assessment, or the Board fails to establish a budget and/or assessment for the succeeding year, the budget and/or assessment in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget and/or assessment is disapproved, the Board shall have the right to make a new budget and/or assessment retroactive to the start of the calendar year upon approval of the same by the Association. Beginning with 2005, the annual assessment may be increased by the Board; however, the Board is under no obligation to increase annual assessments. If the Board increases any annual assessment, the maximum annual assessment increase shall not be more than the total of five percent (5%) plus the Consumer Price Index increase for the calendar year prior to the budgeted assessment year. For the purposes of this subsection, Consumer Price Index shall be the index established by the United States Department of Labor, Bureau of Labor Statistics, U.S. City Average for all Urban Consumers. In the event such index is discontinued, the Board of Directors shall choose an alternative index reflecting regional or nationwide fluctuations in consumer costs. The Declarant shall establish the budget and all annual assessments for the calendar years 2002 and 2003 in its reasonable discretion.

4.8. Special Assessments. In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special Assessments must be approved at a meeting by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the calendar year in which the special assessment is imposed. Special assessments shall be assessments levied for new improvements to the Common Property only. The funding of reserve accounts or capital contribution for maintenance and repair of Common Property shall not be deemed as special assessment.

4.9. Initiation Fees. An initiation fee shall be collected from the purchaser of each Lot from the Declarant at the closing of such purchase. The amount of the initiation fee shall be

determined by the Declarant and shall be set forth in the applicable sales contracts between the Declarant and prospective purchasers of Lots within The Farm at Buckwalter. Initiation fees shall be payable to the Declarant and may be used by the Declarant to offset the operating costs of The Farm at Buckwalter in its sole discretion. Upon payment of an initiation fee, no further initiation fees shall be due for subsequent sales of the applicable Lot, as initiation fees shall not be applicable to any Lot sales other than sales from the Declarant.

4.10. Lien for Assessments and Fines. All sums assessed or fined against any Lot, Owner or Member pursuant to this Declaration shall be secured by a continuing lien on such Lot in favor of the Association. This provision shall evidence the existence and priority of said lien. By owning a Lot, each Member specifically acknowledges and agrees the continuing lien upon the Member's Lot for unpaid assessments and fines.

4.11. Priority. The lien of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a first priority Mortgage, or (c) a lien arising by virtue of any Mortgage in favor of Declarant which is duly recorded in the land records of the county where The Farm at Buckwalter is located. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future.

4.12. Effect of Nonpayment of Assessment or Fine Any assessments or fines (or installments) which are not paid when due shall be delinquent. Any assessment or fine (or installment) which is delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board. As set forth above, a lien shall attach to each lot for unpaid assessments and fines. The Association may file its lien in the Beaufort County records, but shall not be required to in order to perfect the lien. The lien shall cover all assessments or fines then due or which come due until the lien is canceled, and any other amounts provided in this Declaration or permitted by law. In the event that the assessment or fine remains unpaid after thirty (30) days, the Association may institute suit to collect such amounts and foreclose its lien. The Association shall have the right to foreclose its lien by any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

4.13. No Set Off or Deduction. No Owner may waive or otherwise exempt itself from liability for the assessments provided for in this Declaration. No setoff, diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to, comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

4.14. Application of Payments. All payments shall be applied first to costs of collection, then to late charges, then to interest and then to delinquent assessments.

4.15. Date of Commencement of Assessments. Assessments shall start on the date of the closing of the sale of a Lot to a Person other than the Declarant. The first assessment for any Lot shall be adjusted according to the number of days then remaining in that calendar year.

4.16. Specific Assessment. The Board shall have the power to specifically assess a Lot or Lots pursuant to this Section 4 as it shall deem appropriate, in its sole discretion. Failure of the Board to exercise its authority under this Section 4 shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section 4 afterwards. The Board may also specifically assess Owners for expenses of the Association which benefit less than all of the Lots. Such specific assessment shall be assessed equitably among all of the Lots which are benefitted according to the benefit received, as determined by the Board in its sole discretion.

4.17. Transfer Fee Due Upon Lot Resales.

4.17.1. The Declarant or Association shall collect a transfer fee from the transferring Owner upon each transfer of title to a Lot in The Farm at Buckwalter, whether improved or unimproved. All transfer fees shall be deposited into a segregated account used for the maintenance of Common Areas within The Farm at Buckwalter.

4.17.2. Each owner of a Lot upon the resale of said Lot shall, at the closing of their resale, pay to the Declarant a transfer fee in an amount equal to one-quarter of one percent (0.25%) of the gross sales price of said Lot, whether improved or unimproved.

4.17.3. A transferring Owner shall notify the Declarant of a pending title transfer at least fourteen (14) days prior to the transfer. Such notice shall include the name of the transferee, the date of the transfer or closing, and other information as may reasonably be required by the Board of the Association.

4.17.4. An Owner's obligation to pay a transfer fee shall be secured by the Association's lien for assessments set forth herein, and shall be collectible as an assessment against the transferred Lot in the event the transfer fee is not paid by the transferring Owner at the time of closing.

4.17.5. For purposes of this Section 4.16, "resale" is defined as any transfer of legal or equitable title to all or any portion of the Lot for valuable consideration, other than by gift, inheritance, or mortgage foreclosure, where said transfer occurs subsequent to the initial sale by the Declarant, its successors or assigns, to a bona fide purchaser for value. A Resale transfer of legal or equitable title shall also include, but is not limited to, the execution of (i) a contract of sale which provides for a closing more than one (1) year beyond the date of execution of said contract; (ii) a lease for a term, including renewal terms, in excess of one (1) year with a purchase option which applies rental payments towards the purchase price; (iii) an option for a term, including renewal terms, in excess of one (1) year which applies option payments towards the purchase price; (iv) the transfer of any portion of the stock of a corporate Owner, or any portion of the partnership interest of a partnership Owner, or any portion of the beneficial interest of a Trust, or any portion of the legal or beneficial interest in any other form of legal entity which is a Owner.

4.18. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may, but shall not be required to:

4.18.1. advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association and the sum of the annual, special and specific assessments collected by the Association in any calendar year. Such advances

may be evidenced by promissory notes from the Association to the Declarant. The failure of Declarant to obtain a promissory note shall not invalidate the debt;

4.18.2. cause the Association to borrow such amount; however, no mortgage encumbering the Common Property or any improvements maintained by the Association shall be given to secure such a loan; and

4.18.3. provide services to the Association or the Common Property. Declarant shall designate the value of the services provided and such amount may be evidenced by a promissory note from the Association to the Declarant. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section 4.16.

## SECTION 5

### MAINTENANCE & CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION

5.1. Association's Responsibility. The Association shall maintain in good repair the Common Property. This responsibility shall include the operation, maintenance, repair, and replacement of all improvements and landscaping situated on the Common Property as set forth in this Section 5.1.

5.1.1. Lagoon and Drainage Maintenance Best Management Practices. To provide effective storm water pollution control on a continuing basis, periodic maintenance of all wet detention basins, or drainage system lagoons and ponds best management practices are necessary. The Association shall maintain all drainage facilities on the Farm at Buckwalter in conformity with all federal, state, and Town of Bluffton regulations, including best management practices outlined by the U.S. Army Corps of Engineers. These maintenance requirements are as follows:

A. Routine Maintenance: This involves tasks that are performed on a regular basis during the year and are preventive in nature and intended to enhance the aesthetic quality of the drainage facilities. Examples are periodic site inspections, grass mowing, debris and trash removal, bank stabilization, weed control, insect or mosquito control, fence repair, and record keeping.

B. Non-Routine Maintenance: This involves tasks that are performed once every specified number of years to correct problems which might reduce the drainage detention facility's structural integrity or effectiveness. Examples of structural repairs, which will probably be required at 10 to 15 year intervals on the average, include the replacement of outlet pipes and end walls. Major clean-out operations to remove accumulated sediment and debris are typically required every 15 to 20 years. A major clean-out is intended to maintain the required pollution removal efficiency, and also to eliminate the build-up of sediments which might significantly detract from the facility's appearance. Clean-out operations typically include material removal from the forebay and permanent pool, stabilization of the detention facility, and offsite hauling for sediment disposal. Wet detention basins such as lagoons are water quality management facilities designed to achieve runoff pollution removal through

natural physical, biological, and chemical processes within the permanent pool. Although these drainage facilities may resemble small lakes or lagoons, their primary purpose is to achieve water quality management benefits rather than recreational or aesthetic benefits. While these facilities may also permit other uses, there may be certain periods of the year when biological process (e.g. growth of floating algae) limit these other benefits. Likewise, these facilities are likely to exhibit storage depletion between major clean-out due to the accumulations of sediment and debris that the basins are designed to achieve. Drainage lagoon facilities are primarily water quality management devices and it is important that the scope of any schedule for maintenance activities be governed by pollution removal criteria rather than concerns about preserving any recreational or aesthetic benefits.

C. Permanent Lagoon Maintenance and Responsibility Obligation. The Association shall be responsible for ownership and proper maintenance of the permanent lagoons within The Farm at Buckwalter per all applicable regulatory maintenance plans. The Association shall complete any necessary repairs and/or preventative maintenance procedures in a timely manner to ensure proper functioning of the lagoons as storm water devices. The maintenance plans may be amended/revised at any time by federal, state or Town of Bluffton regulations, and the Association shall abide by any prescribed changes. Once conveyed to the Association, the Association shall own and maintain the lagoons until the Town of Bluffton is notified in writing of a transfer in ownership and maintenance responsibility. The notification will include a date for the transfer of responsibility and a letter of acceptance from the new owner.

5.1.2. The Association shall be responsible for Common Property utility expenses such as water, sewer, and electricity.

5.1.3. The Association shall operate and maintain all Common Property lighting with the exception of those street lights billed to Owners and other lighting maintained and operated by a utility company.

5.1.4. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without The Farm at Buckwalter if the Board determines that such maintenance would benefit the Owners.

5.1.5. The Association shall not be responsible for the maintenance, repair or replacement of any roadways and associated infrastructure within The Farm at Buckwalter which has been conveyed to the Town of Bluffton, Beaufort County or another governmental body, public service district, or utility company.

5.1.6. The Association shall not be responsible for any utility infrastructure which is not owned by the Association including, without limitation, water, sewer electricity, telephone, cable television, or propane gas infrastructure.

5.1.7. The Association maintenance shall be performed consistent with The Farm at Buckwalter Standards.

5.1.8. In the event that the Association determines that the need for maintenance, repair, or replacement of Common Property is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner or Occupant, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be a specific assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration.

5.2. Owner's Responsibility. All maintenance of Lots and all structures, parking areas, landscaping, and other improvements on each lot shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with The Farm at Buckwalter Standards and this Declaration. In the event the Board determines that any Owner has failed or refused to properly maintain, repair, or replace items for which such Owner is responsible, the Association may perform such maintenance, repair or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner prior written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have seven (7) days after receipt of such notice within which to complete such maintenance, repair, or replacement. If such maintenance, repair, or replacement is not capable of completion within the seven (7) day period, the Owner must commence such work within seven (7) days and shall complete such work within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an assessment against such Owner and its Lot.

5.3. Conveyance of Common Property by Declarant to Association. The Declarant shall convey to the Association any Common Property located within The Farm at Buckwalter and shown as Common Property, open space, or recreation area on the subdivision plat recorded in the Beaufort County Register of Deeds Office and referenced in detail on Exhibit "A" attached hereto. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

5.4. Security. The Declarant or Association may, but shall not be obligated to, maintain or support certain security improvement and activities within The Farm at Buckwalter. Such security improvements and activities, should the Declarant or Association chose in their sole discretion to install them, may include a manned or unmanned security gate, security lighting, and security surveillance systems, and/or a private security system monitoring each dwelling on a Lot within The Farm at Buckwalter. In the event Declarant or Association chose to install any such security system and require that each dwelling on a Lot be included in such system, the costs of such security system installation within each dwelling of The Farm at Buckwalter shall be the responsibility of the Owner of such lot, and such cost shall be considered an assessment as defined in Section 4 above and shall be collectible as an assessment by the Association or Declarant. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE FARM AT BUCKWALTER. NEITHER THE ASSOCIATION, THE DECLARANT,

NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF THE FARM AT BUCKWALTER, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, DO NOT REPRESENT OR WARRANT THAT ANY SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR ANY SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF THE FARM AT BUCKWALTER, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF THE FARM AT BUCKWALTER, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLINGS AND STRUCTURES LOCATED THEREON, AND TO THE CONTENTS OF DWELLINGS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE FARM AT BUCKWALTER.

## **SECTION 6**

### **USE RESTRICTIONS AND RULES**

6.1. General. All Owners and Occupants must comply with these use restrictions and rules. These use restrictions may only be amended as provided in this Declaration. In addition, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete other rules and regulations applicable to The Farm at Buckwalter, so long as the rules and regulations do not conflict with the terms of this Declaration. Such rules and regulations shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Total Association Vote.

6.2. Fines for Covenant, Rule and Regulation Violations. The Association may adopt fines to enforce the provisions of these Covenants and the published rules and regulations of the Association. Such fines may be adopted and amended from time to time by a majority vote of the

Association Board of Directors. Association fines may not be levied against any Owner until the fines and rules and regulations have been mailed to all Owners to the addresses on record with the Association. Revised fines shall not take effect until mailed to all Owners similarly. Fines levied against Owners for violations of these Covenants, or the Association rules and regulations, shall be a charge against the Lot owned by the Owner in violation of the Covenant, rule or regulation, and shall be a charge and continuing lien on the subject Lot, as well as a personal obligation of the Owner, as set forth in Section 4 above. Owners shall have the right to appeal any Association fine. All appeals shall be in writing and shall be heard by the Board, or a committee selected by the Board. The determinations by the Board, or the Board's appeal committee, of all appeals shall be made in the Board's, or the Board's appeal committee's, sole discretion. Such determinations shall be final adjudications of all fines and shall not be subject to any further appeal whatsoever. The Board may promulgate rules governing the fine appeal process.

6.3. Single Family Residential Use of Lots. All Lots shall be used for single family residential purposes only and no commercial activity of any nature whatsoever shall be conducted thereon. Residential purposes may include home businesses or business activities which do not maintain advertising on a Lot, or invite customers or clients within The Farm at Buckwalter, as long as such businesses comply with the Town of Bluffton Home Occupation Guidelines and the Lot Owner obtains a Town of Bluffton Home Occupation permit. Residential purposes include the sale and leasing of Lots. The Board may issue rules and regulations regarding permitted business activities, so long as the rules and regulations do not conflict with the terms of this Declaration. The Declarant shall have the right to operate a sales office and a construction office from one or more Lots within The Farm at Buckwalter. No garage or part of a garage may be used for business purposes so as to prevent occupant's vehicles from being parked in the garage. Notwithstanding the preceding, the Declarant may utilize its Lots for office space, real estate sales activities, and other development purposes, and nothing in this Section 6 shall impair Declarant's rights to conduct such commercial activities.

6.4. Signs. No sign of any kind shall be erected by an Owner or Occupant within The Farm at Buckwalter without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. Only the Declarant shall have the right to erect and maintain "For Sale" signs on any Lot in its sole discretion. Signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

6.5. Boats, Trailers, Etc. No boat, motor home, trailer, or recreational vehicle or trailer may be left upon any portion of The Farm at Buckwalter for a period longer than eight (8) hours, unless stored in a garage. Vehicles, boats, motor homes, trailers or recreational vehicles which are either unlicensed or inoperable for a period of five (5) days or more may not be stored upon any portion of The Farm at Buckwalter at any time unless fully enclosed in a garage. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans and automobiles. All vehicles shall be parked within the driveway or garage of each Lot. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. Garages shall not be altered to include living space.

6.6. Unlicensed Vehicles. No unlicensed vehicle shall be left upon any portion of The Farm at Buckwalter except in a garage or other area of Common Property designated on a plat recorded in the Beaufort County Register of Deeds Office for recreational vehicle parking. Such vehicles identified above must be removed by the Owner. The Association shall have the right to remove any such vehicle if not removed by the Owner within five (5) days of notice, and the costs of such removal shall be an assessment against such Owner.

6.7. Trucks/Campers. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

6.8. Off Road. No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

6.9. Leasing. Lots may be leased for long term residential purposes for a period of no less than six months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the owner and specifically assess all costs associated therewith against the Owner and the Owner's lot.

6.10. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

6.11. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall be kept on a leash when outside of a Lot. All Owners shall remove their pets' waste from Common Areas and Lots. Owner's shall insure their dogs do not disturb neighboring Owners. Excessively loud dogs may subject the Owner to enforcement action as set forth in Sections 6.3 and Section 11.1 above.

6.12. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her lot. No lot within The Farm at Buckwalter shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within The Farm at Buckwalter.

6.13. Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of The Farm at Buckwalter, including any Lot, without the prior written consent of the Architectural Review Committee. Satellite Dishes which are dark in color and are 18 inches or less in diameter shall be allowed, provided they

are not visible from the street, installed upon or adjacent to a residence, and are integrated with the surrounding landscape.

6.14. Tree Removal. No tree shall be removed without a Town of Bluffton Tree Removal Permit. No trees that are more than four (4) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the Architectural Review Committee.

6.15. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

6.16. Sight Distance at Intersections. All property located at street Intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

6.17. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

6.18. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of both the Town of Bluffton and the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for The Farm at Buckwalter as to how the streets and common areas in The Farm at Buckwalter are laid out.

6.19. Guns. The use or discharge of firearms in The Farm at Buckwalter is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

6.20. Fences. Only white vinyl fencing shall be erected and maintained upon any Lot and only with the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Property.

6.21. Air Conditioning Units. No window air-conditioning units may be installed.

6.22. Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) One (1) decorative post light, (c) street lights in conformity with an established street lighting program for The Farm at Buckwalter, (d) seasonal decorative lights, subject to restrictions on lighting colors set forth by the Association in writing from time to time; or (e) front house illumination of model homes. All Owners must comply with Town of Bluffton exterior lighting ordinances and regulations at all times.

6.23. Swimming Pools. Swimming pools shall not permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence.

6.24. Play Equipment. All play equipment must be located between the rear dwelling line and the rear lot line outside of any wetland buffers. No play equipment whatsoever may be installed on any Lot without prior written Architectural Review Committee approval.

6.25. Mailboxes. All mailboxes located on Lots shall be of a similar style approved by the Architectural Review Committee. Mailboxes shall be kept painted and in good repair by the Owners. Replacement mailboxes may be installed after the type has been approved in writing by the Architectural Review Committee.

6.26. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.

6.27. Clothesline. No exterior clotheslines of any type shall be permitted upon any Lot.

6.28. Storage Sheds and Garages. Construction, installation or placement of a storage shed, tree house, play house, detached garage, or a building separate from the main house on the Lot is not permitted without the prior written consent of the Architectural Review Committee, in its sole discretion. All plans (which must include the length, width, height, materials, colors, and location) must be submitted to the Architectural Review Committee for written approval prior to obtaining building permits or starting construction. The structure must be constructed, installed or placed in a location inconspicuous as much as possible from public view, and outside of any wetland and wetland buffers. All materials used in the construction of such buildings must match the main dwelling located on the Lot.

6.29. Water Conservation. Water conservation is encouraged. All installed irrigation systems must have rain meters installed to prevent landscape irrigation during periods of rain.

## **SECTION 7**

### **ARCHITECTURAL REVIEW BOARD**

7.1. Architectural Standards for Improvements to Lots. No exterior improvement, alteration, addition, or erection whatsoever shall be commenced or placed upon any Lot, unless approved by the Declarant or as approved in accordance with this Declaration. Except as provided above, no exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee ("ARC") established by the Board.

7.2. Architectural Review Committee. The Architectural Review Committee shall consist of between three (3) and seven (7) members and shall be appointed by the Board annually and shall have jurisdiction over modifications and new construction on Lots. So long as the Declarant retains its Class B Membership, the Declarant shall have the power to appoint all the members of the Architectural Review Committee, and the Declarant shall have all rights, benefits and obligations of the ARC as set forth herein.

### 7.3. Operations of the Architectural Review Board.

7.3.1. Meetings. The ARC may hold regular meetings as may be established by the ARC. Special meetings may be called by the ARC Chairman upon the written request of a majority of the members of the ARC then in office. Regular and special meetings of the ARC shall be held at such time and at such place as the ARC shall specify. No notice is required of regular ARC meeting. Three (3) days' prior notice, verbal or written, shall be required for each ARC special meeting. The ARC need not give the purpose or purposes for which the meeting is called. Attendance of a member of the ARC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ARC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ARC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ARC. The ARC shall maintain both a record of votes and minutes for each of its meetings. The ARC shall make reasonable records and minutes available at The Declarant's office at reasonable times for inspection by Members. Any action which may be taken at a meeting of the ARC may be taken without a meeting if written consent signed by all the members of the ARC is filed within the minutes of the ARC. Such consent shall have the same force and effect as a unanimous vote.

7.3.2. Design Standards. The ARC may adopt and promulgate design standards, and where appropriate, shall make findings, determinations, rulings, and orders with respect to the conformity and harmony with the external design and the general quality of the community-wide standards. The ARC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration. Design standards may, but are not required to:

7.3.2.1 govern the form and content of plans and specifications to be submitted to the ARC for approval pursuant to the provisions of this Declaration;

7.3.2.2 govern the procedure for such submission of plans and specifications;

7.3.2.3 establish guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of structures and all other matters that require approval by the ARC pursuant to this Declaration;

7.3.2.4 assure the conformity and harmony of external design within The Farm at Buckwalter.

7.3.3. The ARC may publish copies of any current design standards adopted by it, in which case they shall be made readily available to Members and prospective Members and to all applicants seeking the ARC approval.

7.3.4. The Board may employ architects, engineers, or other persons as it deems necessary to enable the Architectural Review Board to perform its review.

7.3.5. The Architectural Review Board may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

7.3.6. If the Architectural Review Board fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration.

7.3.7. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ARC nor the members thereof assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither the Declarant, the Architectural Review Board, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every owner agrees that such person or owner will not bring any action or suit against the Declarant, the Architectural Review Board, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

7.4. Inspection Rights. Any employee or agent of the Declarant, Association or the ARC may, after reasonable notice, at any reasonable time or times, enter upon any Lot to ascertain whether the installation, construction, alteration or maintenance of any structure is in compliance with the provisions of this Declaration; and neither the Declarant, nor the ARC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Declaration.

7.5. Violations. If any structure is erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ARC, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Declaration. If, in the opinion of the ARC, such violation shall have occurred, the ARC shall notify the Board. If the Board shall agree with the determination of the ARC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action with thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have

the right to impose fines as set forth herein, or proceed in law or equity to enjoin the continuing violation, in which case all costs of enforcing this Declaration, including reasonable attorneys fees and court costs, shall be paid by the Owner in violation. All such costs shall be considered a continuing lien against the Lot in violation of this Declaration and shall be collectible as a specific assessment set forth above.

## **SECTION 8**

### **INSURANCE AND CASUALTY LOSSES**

8.1. **Insurance on Common Property.** The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain. This insurance shall provide fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

8.2. **Liability Insurance.** The Board shall obtain a general commercial liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available, the Board is authorized to obtain directors, and officers, liability insurance coverage.

8.3. **Other Insurance.** In addition to the other insurance required by this Section 7, the Board shall obtain workers' compensation insurance to the extent necessary to satisfy the requirement of South Carolina law. The Board shall also obtain a fidelity bond or bonds on Association directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be in an amount no less than three (3) month's prorated Assessments plus any reserves. Bonds shall contain a waiver of all defenses based upon the exclusion or person serving without compensation and may not be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, also known as law and ordinance endorsements, and flood insurance if necessary, and to the extent necessary, to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

8.4. **Declarant.** The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

8.5. **Premiums.** Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

8.6. Miscellaneous. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefitted parties, as further identified below. Such insurance shall comply with these provisions:

8.6.1. All policies shall be written with an insurance company authorized to do business in South Carolina.

8.6.2. Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

8.6.3. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

8.6.4. All casualty insurance policies shall have an inflation guard indorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be review annually by the Board.

8.6.5. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

8.6.5.1 a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Owners and their respective agents, tenants and guests;

8.6.5.2 a waiver by the insurer of its rights to repair and reconstruct instead of paying a cash settlement;

8.6.5.3 that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

8.6.5.4 that no policy may be canceled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any Board member, Association officer or employ, or employee of the authorized manager of the Association without prior demand in writing deliver to the Association to cure any defect or to cease the conduct and the allowance or a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

8.6.5.5 that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

8.6.5.6 that no policy may be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days prior written notice to the Association.

8.7. Individual Insurance for Lot Owners. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and

malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a specific assessment.

8.8. Damage and Destruction -- Property Insured by Association. Immediately after damage or destruction by any casualty to any improvement covered by Association insurance, the Board or its 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 or repair or reconstruction of the damaged property. Repair or reconstruction, as used in this Section 7, means repairing or restoring the property to substantially the same condition and location that existed prior to the casualty, allowing for changes necessitated by changes in applicable ordinances. Repair or reconstruction procedures shall be as follows:

8.8.1. Any damage to property covered by Association insurance shall be repaired or reconstructed unless seventy-five percent (75%) or the Total Association Vote agree otherwise in a vote taken at a duly called Association meeting held sixty (60) days after the casualty. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) day.

8.8.2. If the insurance proceeds are insufficient to pay for the repair or reconstruction, the Board shall, without the necessity of a vote of the Owners, levy a special assessment against all Owners in proportion to the number of Lots owned by each Owner. Additional assessments may be made in like manner at any time during of following the completion or any repair or reconstruction. If the funds available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

8.8.3. If the Association votes not to repair or reconstruct damage improvements, and no alternatives are authorized by the Association, then the property shall be restored to its natural state and maintained as an undeveloped portion of The Farm at Buckwalter in a neat and attractive condition.

8.9. Damage and Destruction to Improvements on Lots -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within ninety (90) days after such damage or destruction or, where repairs cannot be completed within ninety (90) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within ninety (90) days after such

damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

8.10. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall be paid by the Association or be allocated among the Persons who are responsible for the damage or destruction.

## **SECTION 9**

### **ANNEXATION OF ADDITIONAL PROPERTY**

#### 9.1. Unilateral Annexation By Declarant.

9.1.1. The Declarant shall have the unilateral right and option until seven (7) years after the recording of this Declaration to subject the following property to the provisions of this Declaration ("Annexation") after approval by the Town of Bluffton:

9.1.1.1 any real property touching, or adjacent to, any Lot or Common Property within The Farm at Buckwalter;

9.1.1.2 Annexation shall be made by filing a Supplementary Declaration with the Beaufort County Register of Deeds Office describing the annexed property;

9.1.1.3 Annexation shall be effective upon the date of the filing of the Supplementary Declaration;

9.1.1.4 Declarant shall have the right to modify the terms of the Declaration as it may apply to any annexed property. As long as the provisions of this Declaration applicable to property previously subjected to this Declaration are not changed and as long as rights of exiting Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

9.1.1.5 The rights reserved by the Declarant to subject additional property to this Declaration shall not imposed any duty or obligation upon the Declarant to subject additional property to this Declaration. If additional property is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants or restrictions similar to those contained herein to any additional property. Nothing in this Declaration shall impair or restrict the Declarant's development of any additional property, whether such development is consistent with the covenants and restrictions in this Declaration or not.

9.2. Other Annexation. Other real property may be subjected to this Declaration with the consent of the owners thereof and the consent of the Declarant, so long as the Declarant owns any property in The Farm at Buckwalter, upon the affirmative vote of two thirds (2/3) of the Owners. Any such Annexation shall describe the property to be annexed in a Supplementary Declaration signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

**SECTION 10**  
**MORTGAGEE PROVISIONS**

10.1. Mortgagee Provisions. The following provisions are for the benefit of holders of first Mortgages on Lots in The Farm at Buckwalter. The provisions of this Section 9 apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

10.2. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association, such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder", will be entitled to timely written notice of:

10.2.1. any condemnation loss or any casualty loss which affects a material portion of The Farm at Buckwalter or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

10.2.2. any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage or such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of an unencumbered Lot of any obligation under the Declaration or the Bylaws which is not cured within sixty (60) days;

10.2.3. any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

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

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

10.5. Applicability of Section. Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or South Carolina law for any of the acts set out in this Section.

**SECTION 11**  
**EASEMENTS**

11.1. Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot. Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Property to the members of the Owner's family and to such Owner's tenants and guests. Such delegation shall be deemed when any Owner leases its Lot. The Owners' easements for use and enjoyment shall be subject to the following provisions:

11.1.1. the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions of the Common Property by an Owner, its guests and invitees, at designated times for special events upon such Owner's payment to the Association of a reasonable use charge, as set by the Board in its sole discretion;

11.1.2. the right of the Association to suspend a Lot Owners' voting rights and the right to use the Common Property for any period during which any assessment against such Owner remains unpaid, or for a reasonable period of time for a violation of this Declaration, Bylaws or the Associations rules or regulations;

11.1.3. the right of the Association to borrow money for the purpose of improving the Common Property, or for construction, repairing or improving any facilities located on the Common Property, and to give as security for the payment of any such loan a Mortgage encumbering the Common Property; provided, however, the lien and encumbrance of any such Mortgage shall be subject and subordinate to the provisions of this Declaration. Any such Mortgage on the Common Property shall be approved by at least two thirds (2/3) of the Total Association Vote. The exercise of any rights held by any mortgagee of Common Property shall not cancel or terminate any provisions of this Declaration, or the holder of any Mortgage on any Lot.

11.1.4. the right of the Association to dedicate or grant licenses, permits or easement over, under and through the Common Property to governmental entities for public purposes; and

11.1.5. the right of the Association to dedicate or transfer all or any portion of the Common Property subject to the such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless approved by at least two thirds (2/3) or the Total Association Vote.

11.2. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within The Farm at Buckwalter, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving The Farm at Buckwalter or any portion thereof. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service The Farm at Buckwalter. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement.

11.3. Easement for Drainage. Declarant hereby reserves a perpetual easement across all The Farm at Buckwalter property for the purpose of altering drainage and water across all The Farm at Buckwalter property for the purpose of altering drainage and water flow. This right shall include,

but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping water flow across any Lot or any property in The Farm at Buckwalter. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

11.4. Easement for Entry. In addition to the other rights reserved to Declarant and the Association, the Declarant or the Association shall have the right (but not the obligation) to enter upon any property or Lot within The Farm at Buckwalter for emergency, security, and safety reasons. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

11.5. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of The Farm at Buckwalter, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

11.6. Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for The Farm at Buckwalter, over and upon each Lot as more fully described on the recorded subdivision plats for The Farm at Buckwalter. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

11.7. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in The Farm at Buckwalter for development or sale, Declarant reserves an easement across The Farm at Buckwalter for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of The Farm at Buckwalter as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near The Farm at Buckwalter. This easement shall include, without limitation:

11.7.1. the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of The Farm at Buckwalter as well as any Lot in The Farm at Buckwalter,

11.7.2. the right to tie into any portion of The Farm at Buckwalter with driveways, parking areas and walkways;

11.7.3. the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services;

11.7.4. the right (but not the obligation) to construct recreational facilities on Common Property;

11.7.5. the right to carry on sales and promotional activities in The Farm at Buckwalter;

11.7.6. the right to place direction and marketing signs on any portion of The Farm at Buckwalter, including any Lot or Common Property;

11.7.7. the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities;

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

11.8. Irrigation Easements. There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes and other bodies of water located within The Farm at Buckwalter for irrigation purposes.

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

## **SECTION 12**

### **GENERAL PROVISIONS**

12.1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by

the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

12.2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of The Farm at Buckwalter to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restriction. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

12.3. Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of this Declaration applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

12.4. Duration. The covenants and restrictions of this Declaration shall run with and bind The Farm at Buckwalter, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by South Carolina law. If South Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of 2/3 of the Lots and the Declarant (if the Declarant still owns any property in The Farm at Buckwalter or has the right to annex additional property) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

12.5. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, HUD, the VA, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots

subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended:

12.5.1.1 for so long as the Declarant owns any property in The Farm at Buckwalter or has the right to annex additional property, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots;

12.5.1.2 If the Declarant no longer owns any Property in The Farm at Buckwalter and no longer has the right to annex additional property, upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots.

12.6. Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within The Farm at Buckwalter and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within The Farm at Buckwalter.

12.7. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

12.8. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

12.9. Captions. The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

12.10. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

12.11. Indemnification. To the fullest extent allowed by applicable South Carolina law, the Association shall indemnify every officer of the Association and director of the Association against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding

to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors 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 and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. This indemnification shall also include attorneys fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

12.12. Books and Records.

12.12.1. Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

12.12.2. Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.

12.12.3. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

12.13. Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide; provided, however, after having received the Board's financial statements at their annual meeting, by a majority of the Total Association Vote, the Owners may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

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

12.15. Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development or sale in The Farm at Buckwalter, or has the right to unilaterally annex additional property to The Farm at Buckwalter) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in The Farm at Buckwalter or the privilege of possession and enjoyment of any part of The Farm at Buckwalter.

12.16. Implied Rights. The association may exercise any right or privilege given to it expressly by the Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

12.17. Variances. Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for The Farm at Buckwalter.

12.18. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to ad valorem taxation or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended during the time period when Declarant owns any property for development or sale in The Farm at Buckwalter, or has the right to unilaterally annex additional property to The Farm at Buckwalter unless such amendment is made by the Declarant.

IN WITNESS WHEREOF, the Declarant herein, hereby executes this instrument under seal this 17 day of January, 2002.

WITNESSES:

DECLARANT:  
D.R. Horton, Inc., a Delaware corporation

Patricia Carr  
[Signature]

[Signature]  
By: Richard Schwartz  
Its: Vice President

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

ACKNOWLEDGMENT

I, the undersigned notary, do hereby certify that D.R. Horton, Inc., a Delaware corporation, by Richard Schwartz its Vice President, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 17 day of January, 2002.

[Signature]  
Notary Public of South Carolina  
My Commission Expires: March 12, 2011

**EXHIBIT "A"**

Property Subject to this Declaration  
Legal Description to The Farm at Buckwalter Covenants

All that certain tract and parcel of land located in Bluffton, Beaufort County, South Carolina containing 67.063 acres, more or less, and shown and depicted as "The Farm at Buckwalter Phase I" on that certain plat prepared by Thomas & Hutton Engineering Co. by Boyce L. Young, S.C.R.L.S. #11079, and recorded on November 21, 2001 in the Beaufort County Register of Deed's office in Plat Book 83 at Pages 142, 143, 144, and 145. Said plat depicting single family residential lots, open spaces, rights of way, amenity areas, future development property, and future housing areas. All the above described properties are comprised of 67.063 acres, more or less, shall be encumbered by, and subject to, the benefits and burdens of the covenants, conditions, and restrictions of which this exhibit is a part. For a more particular description as to the courses, metes, and bounds of the above described 63.063 acre tract, reference is hereby made to the above described plat of record.

**BYLAWS**

**OF**

**THE FARM AT BUCKWALTER  
HOMEOWNER'S ASSOCIATION, INC.**

The following Bylaws shall govern The Farm at Buckwalter Homeowners' Association, Inc.

1. **Association.** In conjunction with the development of The Farm at Buckwalter subdivision as shown on the plat recorded in the Beaufort County Register of Deeds Office in Book 83 at Page 142,143, 144 and 145 ("Property"), a South Carolina nonprofit corporation known as The Farm at Buckwalter Homeowners' Association, Inc. has been formed ("Association"). The offices of the Association shall be at the offices of D.R. Horton, Inc. ("Declarant"), located at 5 Island West Court, Bluffton, South Carolina 29910, or such other place as may be subsequently designated by the Board of Directors of the Association.
2. **Bylaws Applicability.** The provisions of these Bylaws are applicable to the Association. All terms used herein and not otherwise defined shall have the meaning ascribed to them in the Covenants for the Property which were recorded in the Beaufort County Register of Deeds Office in Official Record Book \_\_\_\_\_ at Page \_\_\_\_\_. All present or future Owners, tenants, their guests and invitees, or any other person who might use the Property in any manner, are subject to these Bylaws as they may be amended from time to time. The acquisition or rental of any Lot, or the act of occupancy of any Lots, will signify that these Bylaws, and any authorized amendments to the foregoing are accepted and ratified, and will be complied with by the Lot Owner, renter, their guests or invitees.
3. **Voting, Majority of Owners, Quorum, Proxies.**
  - a. **Eligibility.** Any Lot Owner is deemed to have consented to be a Member of the Association. There shall be one membership for each Lot owned. Transfer of ownership of a Lot, either voluntary or by operation of law, shall terminate membership in the Association, and said membership becomes vested in the transferee. If the Lot ownership is vested in more than one Lot Owner, then all of the Lot Owners so owning such Lot shall agree upon the designation of one of the Lot Owners of such Lot to act as a Member of the Association. If Lot ownership is vested in a corporation, partnership, limited liability company, or other entity, said entity must designate one individual to act as a Member of the Association.
  - b. **Voting.** Each Member shall have Association votes equal to the number of Lots owned by the Member. Additionally, as set forth in Section 3.2 of the Covenants, the Declarant shall have Class B membership voting rights equal to one (1) vote for each

Lot it owns, plus one (1) vote for each Lot owned by a Person other than the Declarant. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the date that all the Lots in The Farm at Buckwalter have been conveyed by the Declarant to an individual Owner or Owners for residential occupancy; or (b) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to the Covenants. The Class B votes of Declarant shall be in addition to the votes Declarant receives due to its ownership of Lots as a Class A member.

- c. Majority Vote. As used in these Bylaws, the term Majority Vote shall mean fifty-one percent (51%) or more of the total number of votes including Members' votes and Declarant's votes.
  - d. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a Majority Vote as defined in Section 3(c) shall constitute a quorum.
  - e. Proxies. Member votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting.
  - f. Voting Of Members. The vote of a majority of the Members' votes including Declarant represented at any meeting at which a quorum shall be present shall be binding upon all Owners for all purposes except where in the Covenants, or in these Bylaws, or by law, a higher percentage vote is required.
4. **The Farm at Buckwalter Homeowners' Association, Inc.**
- a. Association Responsibilities. The Association shall have the responsibility of administering the Property and electing the Board of Directors.
  - b. Place Of Meetings. All meetings of the Association shall be at the offices of the Association, or at such other place as designated by the Board of Directors or the Management Agent and stated in the notice of meeting.
  - c. Annual Meetings. Annual meetings of the Association shall be held once a year during the month of October or at such other time as the Board of Directors may agree upon. At such meetings there shall be elected by vote of the Members, a Board of Directors in accordance with the requirements of Section 5 of these Bylaws, and there shall be a report by the President or Secretary-Treasurer on the activities and financial condition of the Association. The Members may also transact such other business of the Association as may properly come before them.

- d. Special Meetings. It shall be the duty of the Secretary to call a special meeting of the Members as directed by: (i) resolution of the Board of Directors; (ii) at the request by a majority of the Directors; (iii) or upon a petition signed by twenty percent (20%) of the Owners and presented to the Secretary. A notice of any special meeting shall state the time and place of such meeting and the purpose or purposes thereof. No business shall be transacted at a special meeting except as stated in the notice. If a Member intends to raise a matter at a special meeting, said Member shall submit such request in writing to the Secretary or President at least ten (10) days before the date notice is to be mailed to the Members in order for such matter to be included in the Notice of Special Meeting.
- e. First Meeting. The first meeting of the Association shall be held within one hundred eighty (180) days from the date that eighty (80%) percent of the Lots in the Property have been conveyed by the Declarant to Owners other than Declarant.
- f. Notice Of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purposes thereof as well as the time and place where it is to be held, to each Owner of record at least fifteen (15), but not more than sixty (60) days prior to such meeting. The mailing of a notice in the manner provided in this Section shall be considered notice served. The notice of meeting shall include any matters the Members intend to raise at the meeting if a request is submitted to the Secretary or President in writing at least ten (10) days prior to notice being mailed, which requests sets forth the matters to be raised.
- g. Quorum Requirements. A Majority of the Members present in person or by proxy constitutes a quorum for any meeting purpose.
- h. Adjourned Meeting. If any meeting of the Association cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. The time, date, and place of the meeting shall be set and announced before adjournment of the first meeting. Upon the reconvening of said meeting a quorum shall be constituted if twenty-five percent (25%) of the Members are present in person or by proxy at said reconvened meeting.
- i. Order Of Business. The order of business at all Annual Meetings of the Association shall be as follows:
- i. Roll Call.
  - ii. Proof of Notice of Meeting or Waiver of Notice.
  - iii. Reading of Minutes of Preceding Meeting.
  - iv. Reports of Officers.
  - v. Reports of Committees.

- vi. Election of Directors.
- vii. Unfinished Business.
- viii. New Business.

The order of business at a Special Meeting of the Association shall include items (i) through (viii) above, and thereafter, the agenda shall consist of the items specified in the Notice of Meeting.

- j. Record Date. The Board of Directors shall fix a record date for determining Owners entitled to notice of and to vote at each annual or special meeting. Such record date shall be at least ten (10) days, but not more than forty (40) days before the meeting. Only Members holding title to Lots as reflected in the Beaufort County records on the record date shall be entitled to notice.
  - k. Action By Written Consent. Whenever the vote of Members at a meeting is required or permitted by these Bylaws to be taken in connection with action of the Association, the meeting and vote of Members may be waived if a majority of Members who would have been entitled to vote consent in writing to such action being taken. Notice of such action shall be given to all Members, unless all Members participated in the approval of such action.
  - l. Waiver And Consent. Any Member may waive any notice of meeting required by these Bylaws if the waiver is submitted in writing, signed by the Member entitled to notice, and delivered to the Association prior to the date of the meeting. An Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting unless the Owner objects to holding the meeting or transacting business at the meeting at the beginning of the meeting. Further, an Member's attendance at a meeting waives objection to considerations of a particular matter at the meeting that is not within the purpose described in the notice for the meeting, unless the Member objects to the consideration of the matter at the time when it is presented at the meeting.
  - m. Membership List. After a record date for a notice of meeting has been fixed by the Board of Directors, a complete list of Members of the Association shall be prepared by the Secretary or Treasurer. This Membership list shall list the Members and shall include the addresses and number of votes each Member is entitled to vote at the meeting. Such list shall be maintained in the office of the Association beginning the day after notice is given of the meeting for which the list was prepared and continuing through the meeting.
5. Board of Directors.
- a. Number And Qualification. The affairs of the Association shall be governed by a Board of Directors ("Board") comprised of three (3), five (5) or seven (7) persons.

The Declarant shall appoint the initial Board. The first Board of Directors consisting of three (3) persons shall be designated by the Declarant at an organizational meeting. These appointments will continue until the first annual meeting of the Members held pursuant to the provisions of these Bylaws. At the first Annual Meeting of the Association, the Board shall be increased to five (5) directors. The initial term of office for two (2) directors of the Board shall be fixed at three (3) years. The initial term of office of two (2) directors of the Board shall be fixed at two (2) years, and the term of office of one (1) director of the Board shall be fixed at one (1) year. At the expiration of the initial terms of office of each director of the Board, a successor shall be elected to serve a term of three (3) years. The directors of the Board shall hold office until their successors have been elected and hold their first meeting. All directors shall be subject to replacement, in the event of resignation or death, in the manner set forth in this Section. Initially, Directors do not need to be Members. So long as the Declarant owns more than one (1) Lot, the Declarant shall be entitled to appoint a majority of the Board of Directors. After the Declarant no longer owns at least two (2) Lots, all Directors shall be Members.

- b. General Powers And Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association.
- c. Specific Powers And Duties. In addition to the general powers referenced above, the Board shall be responsible for the following:
  - i. Care and upkeep of the Common Property.
  - ii. Establishment of the annual budget.
  - iii. Employment, dismissal and control of the Management Agent and any personnel necessary for the maintenance and operation of the Common Property.
  - iv. Collection of all assessments and fees from the Owners.
  - v. Obtaining of insurance for the Property.
  - vi. Grant or relocate easements which are not inconsistent with the Owners' full use and enjoyment of the Common Property.
  - vii. Making of, or causing to be made, repairs, additions and improvements to or alterations of, the Common Property and repairs to and restoration of the Common Property.
  - viii. To make available for inspection, upon request during normal working hours or under other reasonable circumstances, to Lot Owners, the holders, insurers or guarantors of any first mortgage on any Lot, Bylaws, other rules or regulations pertaining to the Association, and the books, records and financial statements of the Association.
  - ix. To adopt and implement a policy regarding resale of Lots, the purpose of said policy to assist Lot Owners to provide timely information to prospective buyers while not burdening the Association financially.

- d. Management Agent. The Board of Directors may retain a Management Agent, at the compensation established by the Board, to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in this Section. Any contracts with the Management Agent shall be for a reasonable term and shall contain reasonable provisions regarding the right of the Association to terminate said contracts.
- e. Vacancies. Vacancies in the Board of Directors caused by reason other than the removal of a director of the Board by a vote of the Members shall be filled by vote of the majority of the remaining directors. Each person so elected shall be a director of the Board until a successor is elected at the next meeting of the Association. If a quorum cannot be achieved due to vacancies in the Board, only a majority of the remaining Board shall be required to elect successor Board members.
- f. Removal Of Director. At any annual or special meeting of the Association, any one or more of the directors of the Board may be removed with or without cause by a majority of Members and a successor may then be elected to fill the vacancy. Any director of the Board whose removal has been proposed to the Association shall be given an opportunity to be heard at the meeting. If a director ceases to be an Owner, said director shall either resign or be removed by the Board. Notwithstanding any other provision contained herein, any director of the Board who was elected by the Members shall only be removed by the Members at a meeting where the purpose, or one of the purposes, as stated in the Notice of Meeting, is the removal of said director.
- g. Organizational Meeting. The organizational meeting of the Declarant's appointed first Board shall be held at such time and place as shall be determined by the Declarant. No notice shall be necessary to the newly elected Board members to legally constitute such an organizational meeting, providing a majority of the Board shall be present.
- h. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least four (4) such meetings shall be held each fiscal year. Notice of regular meetings of the Board shall be given by the Secretary or Treasurer, or other designated person to each Board member personally, by mail, or facsimile at least two (2) days prior to the day of the meeting.
- i. Special Meetings. Special meetings of the Board may be called by the President, on three (3) days prior notice to each director, given personally, by mail, or facsimile, which notice shall state the time, place, and the purpose or purposes of the meeting.

- j. Waiver Of Notice. Before or at any meeting of the Board, a director may waive in writing notice of such meeting. Attendance or participation by a director at any meeting of the Board shall constitute a waiver of notice. If all directors are present at a meeting of the Board, no notice shall be required.
  
- k. Action Without A Meeting. Actions of the Board may be taken without a meeting if the action is taken by all directors of the Board and evidenced by one or more written consents describing the action taken, signed by each director, and included in the corporate records of the Association.
  
- l. Board Quorum. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business. Actions and resolutions approved by a vote of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board. Directors may participate in a regular or special meeting by, or conduct the meeting through any means of communication by which all directors participating may hear each other simultaneously during the meeting, and directors so participating by this means shall be deemed to be present in person at the meeting. If at any meeting of the Board there is less than a quorum present, the majority of the directors present may adjourn the meeting to another time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. Proxies shall not be available for either a Board quorum or for voting purposes.
  
- m. Fidelity Bonds. The Board may require that any Management Agent, officers or employees of the Association handling or responsible for Association funds furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.
  
- n. Compensation. No director shall receive any compensation from the Association. However, a Director may be reimbursed for actual expenses incurred in the performance of his or her duties.
  
- o. Liability Of The Board Of Directors. Except as required under the laws of South Carolina, the directors shall not be liable to the Lot Owners or Members for any mistake of judgment, negligence, or otherwise, except for willful misconduct. To the extent permitted under the laws of South Carolina, the Lot Owners and Members shall indemnify and hold harmless the Board of Directors against all contractual liability to others arising out of contracts entered into by the Board of Directors on behalf of the Association, unless any such contract is contrary to the provisions of the Covenants or of these Bylaws. Directors who are members of, or employed by Declarant, are authorized and allowed to contract with Declarant and affiliated corporations without being charged with self-dealing.

6. **Officers.**

- a. **Designation.** The principal officers of the Association shall be a President, a Vice President, and a Secretary and/or Treasurer all of whom shall be elected by the Board. The Board may appoint an Assistant Treasurer and Assistant Secretary, and such other officers as, in their judgment, may be necessary. One person may hold more than one office.
- b. **Election Of Officers.** The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.
- c. **Removal Of Officers.** Upon an affirmative vote of a majority of the directors of the Board, any officer may be removed either with or without cause, and a successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose. No officer shall continue to serve as such if he or she shall cease to be an Owner.
- d. **Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the office.
- e. **President.** The President shall be the Chief Executive Officer of the Association. The President shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties which are usually vested in the office of President of an incorporated nonprofit Association, including but not limited to, the power to appoint committees from among the Lot Owners as appropriate to assist in the conduct of the affairs of the Association. The President shall sign all leases, mortgages, deeds and other written contracts and instruments and shall co-sign all checks and promissory notes, and perform all of the duties which may be delegated from time to time by the Board of Directors.
- f. **Vice President.** The Vice President shall take the place of the President and perform the President's duties when the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other director of the Board to perform such duties on an interim basis. The Vice President shall also perform other duties as requested by the Board.
- g. **Secretary And Treasurer.** The offices of Secretary and Treasurer may be combined or separated. The Secretary or Treasurer shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. The Secretary or Treasurer shall have charge of the record books and papers of the Association and shall authenticate the records of the Association. The Secretary or Treasurer shall have

responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board.

7. **Notices.**

- a. **Definition.** Whenever under the provisions of the Covenants or these Bylaws notice is required to be given to the Board of Directors, the Management Agent or a Member, it shall not be construed to require personal notice; but such notice may be given in writing, by first class, certified or registered mail, by depositing the same in a post office or letter box, in a postpaid sealed envelope, addressed to the Board of Directors, the Management Agent or the Member, at such address as appears on the books and records of the Association. Notice shall be deemed given as of the date of mailing.

8. **Obligations of the Owners.**

- a. **Assessments For Common Expenses.** All Owners shall be obligated to pay the Assessments imposed by the Association and to meet all Association expenses for upkeep and maintenance of Common Property as set forth in the Covenants.
- b. **Assessments To Remain In Effect Until New Assessments Made.** The omission by the Board of Directors before the expiration of any year to fix the Assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of the Covenants and Bylaws or a release of any Owner from the obligation to pay Assessments, or an installment thereof, for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed by the Board at a duly held Board meeting.
- c. **Records.** The Management Agent or Board of Directors shall keep detailed records of the receipts and expenditures affecting the Common Property and any other Association expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the Owners during reasonable business hours.
- d. **Default In Payment Of Common Charges.** The Board shall take prompt action to collect any Assessment due from an Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. In the event of default by any Owner in paying Assessments, such Owner shall be obligated to pay interest, late charges and collection charges as set forth in the Covenants.

- e. Statement Of Assessments. When requested in writing, the Board shall promptly provide any purchaser, Owner, mortgagee or prospective mortgagee of a Lot with a written statement of all unpaid Assessments due from the Owner of that Lot for a reasonable fee. The purchaser or mortgagee's liability therefor shall be limited to the Assessment amount as set forth in the statement. Any mortgagee holding a lien on a Lot may pay any unpaid Assessments payable with respect to such Lot and upon such payment such mortgagee shall have a lien on such Lot for the amounts paid of the same rank as the lien of his encumbrance. Any mortgagee holding mortgages on more than five (5) Lots shall be entitled, upon request, to receive a statement of account on the Lots securing all of said mortgages once each calendar year without any fee or charge.
- f. Statement Upon Resale. No Owner shall convey or sell a Lot unless and until all unpaid Assessments against the Lot shall have been paid. Such unpaid Assessments, however, may be paid out of the proceeds from the sale of a Lot or by the Owner's grantee. Upon the written request of an Owner or the Owner's prospective purchaser, the Board or the Management Agent shall furnish a written statement of the unpaid Assessments due from such Owner for a reasonable fee, which shall be conclusive evidence of the payment of Assessments prior to the date of the statement. Further, the Association shall undertake to provide copies of the Covenants, these Bylaws, or other materials regarding the Association upon the written request of an Owner in connection with the sale of a Lot. A reasonable charge may be made by the Board for the issuance of Assessment statements and Association materials.
- g. Maintenance And Repair. All maintenance, repair and replacement to the Common Property shall be made by the Board or its agent and shall be charged to all the Owners as Common Expenses, excepting to the extent that the same may be necessitated by the negligence, misuse or neglect of an Owner, in which such case the expense shall be charged to such Owner as set forth in the Covenants.
- h. Right Of Entry.
- i. An Owner shall grant the right of entry to the Management Agent or to any person authorized by the Board in case of any emergency originating in or threatening a Lot, whether the Owner is present at the time or not.
  - ii. All Owners shall permit other Owners, or their representatives, when so required, to enter their Lot for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided that such requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergency, the right of entry shall be immediate.

- i. **Fiscal Year.** The fiscal year for the Association shall be determined by the Board of Directors.
  - j. **Litigation.** No judicial proceeding or litigation shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast by the Owners. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Covenants or Bylaws (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving taxation, including, e.g., challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. In the event any judicial proceeding or litigation is instituted, then the Association shall assess all Owners for the costs of such litigation, including, without limitation, attorneys' fees incurred, and funds from regular Assessments shall not be used for any such claim or litigation.
9. **Insurance.** The Board of Directors shall be required to obtain and maintain insurance policies covering the Property Common Property without prejudice of the right of the Owner to obtain additional individual insurance policies at his or her own expense.
10. **Mortgages.**
- a. **Notice To Board.** An Owner who mortgages a Lot shall notify the Board of the name and address of the Mortgagee. The Association shall maintain such mortgagee information.
  - b. **Notice To Mortgagee.** The Board shall give reasonable advance written notice of the events below to all Regime mortgagees from which it receives a written request. Such written request must identify the name and address of the mortgagee and the encumbered Lot number and address:
    - i. Any unpaid Assessments due the Association for over ninety (90) days from the Owner(s) of the Lot;
    - ii. Any default by the Owner of the Lot in the performance of obligations under the Covenants or Bylaws when such default is not cured within sixty (60) days.
    - iii. Any notice of special or annual meetings of the Association.
    - iv. Any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first mortgage held, insured, or guaranteed by such mortgagee;
    - v. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
    - vi. Any proposed action which would require the consent of a specified percentage of mortgagees as specified in these Bylaws or in the Covenants.

- c. Statements To Mortgagee. Upon written request to the Association from any mortgagee of which it has notice as herein provided, the Board shall supply such mortgagee with a reasonably current financial statement of the Association within a reasonable time of such request.

11. Amendments.

- a. Requirements For Amendments. These Bylaws may be amended only with the consent of at least sixty-seven (67%) percent of the Owners of Lots in the Property. Notwithstanding the foregoing, so long as the Declarant remains the Owner of more than one Lot in the Property, these Bylaws shall not be amended so as to adversely affect the Declarant without the Declarant's consent.

12. Miscellaneous Matters.

- a. Number. When the context requires, the use of the singular includes the plural.
- b. Definitions. The definitions contained in the Covenants apply to these Bylaws.
- c. Execution Of Documents. The President, Vice President, or Secretary are responsible for preparing, executing, filing and recording amendments to the Covenants and Bylaws, and shall be authorized to execute any other document which the Association may from time to time be required to execute.
- d. Notices. All notices required by these Bylaws shall be hand delivered or sent by mail to the Association at the address of the President; to Lot Owners at the address of the Lot or at such other address as may have been designated by such Lot Owner from time to time in writing to the Association. All notices from or to the Association shall be deemed to have been given when mailed or delivered, except notice of changes of address which shall be deemed to have been given when received.
- e. Captions. The captions contained in these Bylaws are inserted as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision of the Bylaws.
- f. Invalidity. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.
- g. Conflict. These Bylaws are set forth to comply with the requirements of the South Carolina Non-Profit Corporation Act of 1994, and may be amended from time to time. In the event of any conflict between these Bylaws and the provisions of such

statutes or the Covenants, the provisions of such statutes or the Covenants, as the case may be, shall control.

- h. Waiver. No restriction, condition, obligation, or covenant contained in these Bylaws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the violations or breaches thereof which may occur.