

NOTICE: THIS DECLARATION SUBJECTS CERTAIN MATTERS TO ARBITRATION UNDER §15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE GARDENS OF WHITNEY LAKE ASSOCIATION

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**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE GARDENS OF WHITNEY LAKE ASSOCIATION**

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE GARDENS OF WHITNEY LAKE ASSOCIATION, INC.** is made this 9th day of March 2006, by Whitney Lake, LLC, a South Carolina limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the Property, as hereinafter defined, located in the City of Charleston, Charleston County, South Carolina, and Declarant desires to subject the Property to the provisions of this Declaration in order to provide a flexible and reasonable method for the administration and maintenance of the Area of Common Responsibility, as defined below, within that community in Charleston County, South Carolina, commonly known as (The Gardens of Whitney Lake.)

NOW THEREFORE, this Declaration and the covenants, restrictions and easements set forth herein shall be covenants to run with the land and all the Property is subject and subordinate to the provisions of this Declaration. The Declaration shall inure to the benefit of and shall be binding upon each Owner and his, her or its respective heirs, legal representatives, successors, lessees, grantees, assigns and mortgagees.

BY THE RECORDING OF A DEED OR THE ACCEPTANCE OF TITLE TO A UNIT OR ANY INTEREST THEREIN, THE PERSON OR ENTITY TO WHOM SUCH UNIT OR INTEREST IS CONVEYED, AND THEIR HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES, GRANTEES, ASSIGNS AND MORTGAGEES SHALL BE DEEMED TO HAVE AGREED TO BE BOUND BY THIS DECLARATION AND THE BY-LAWS OF THE ASSOCIATION.

ARTICLE 1. DEFINITIONS

1.1. DEFINITIONS

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have all the following meanings, and all definitions shall be applicable to the singular and plural forms of any such term(s):

1.1.1. "Added Property" means real property, whether or not owned by a Declarant, which is made subject hereto as provided in Article 2 hereof.

1.1.2. "Affiliate" means any entity which is owned by the Declarant, which owns the Declarant, or in which the Declarant or Persons holding an interest in Declarant own at least fifty per cent (50%) of the interests.

1.1.3. "Apartment Unit" means each dwelling unit in a residential apartment structure that is separately rented or offered for rent, including any unit, if applicable, for an apartment manager.

1.1.4. "Area of Common Responsibility" means any area for which the Association expressly assumes some or all of the responsibility for maintenance, repair and management, including, without limitation, the Common Areas and portions of the Property expressly so designated by the Declarant or Association. The Area of Common Responsibility shall include, without limitation, the following, if specifically designated as an Area of Common Responsibility or Common Area of the Association, or the responsibility of the Association, in this Declaration or any amendment or supplement thereto approved by Declarant, or on a recorded plat of the Property or portion of the Property, which plat is approved by Declarant or the Association: (a) streets, alleys, street shoulders and curbs, walkways and bicycle paths, signage, landscaping, street lighting, signage lighting and landscape lighting, whether within the Common Area or unpaved portions of designated roadways and rights-of-way, whether said rights-of-way are privately owned, dedicated to the public, or conveyed to the State of South Carolina or any governmental subdivision thereof, (b) lakes, lagoons, drainage ways, parks, greens and gardens, (c) any common utility lines or facilities which have not been dedicated to and accepted for maintenance by a private or public utility; and (d) recreational facilities.

1.1.5. "Assessment" means the charges from time to time assessed against a Unit by the Association in the manner provided in Article 6, and shall include Regular, Special Assessments and Working Capital Assessments.

1.1.6. "Association" means The Gardens of Whitney Lake Association, Inc., a South Carolina not-for-profit corporation.

1.1.7. "Board of Directors" or "Board" means the Board of Directors of the Association.

1.1.8. "By-Laws" means the By-Laws duly adopted by the Association which govern the administration and operation of the Association, as may be amended from time to time. A copy of the initial By-Laws is attached hereto as Exhibit B.

1.1.9. "Common Area" means all areas shown and designated as a Common Area, or similar wording clearly indicating such intent, in this Declaration or any

amendment or supplement to this Declaration approved by Declarant; or on any recorded plat of the Property, or any portion thereof, which plat has been approved in writing by Declarant. THE DESIGNATION OF ANY OF THE PROPERTY OR IMPROVEMENTS THEREON AS COMMON AREA SHALL NOT MEAN OR IMPLY THAT THE PUBLIC AT LARGE ACQUIRES ANY EASEMENT OF USE OR ENJOYMENT THEREIN.

1.1.10. "Common Expenses" means all liabilities or expenditures made or incurred by or on behalf of the Association, together with all funds necessary for the creation or maintenance of financial, equipment or capital improvement reserves, consistent with the provisions of this Declaration.

1.1.11. "Condominium Unit" means each dwelling unit in a residential condominium as defined in the master deed of the condominium regime. The Association shall have the right to determine whether a Condominium Unit exists and how many Condominium Units exist at a particular time, subject to the provisions of this Declaration.

1.1.12. "Controlling Interest" means the ownership by Declarant or any Affiliate of Declarant, as of the date of such determination, of at least ten percent (10%) of the Zoned Density of all real property approved by the City of Charleston, South Carolina for current or future portions of The Gardens of Whitney Lake planned development.

1.1.13. "Declarant" means Whitney Lake, LLC, a South Carolina limited liability company, its successors and assigns, and any entity designated as a successor declarant by Whitney Lake, LLC by a recorded amendment or supplement to this Declaration, provided, however, that this definition shall not include the purchaser, owner, or mortgagee of any Unit.

1.1.14. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for The Gardens of Whitney Lake Association and all amendments or supplements to this Declaration recorded from time to time in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina.

1.1.15. "Developer" means the owner of a Parcel which is subject to this Declaration for the purpose of subdivision or development into Units, their successors and assigns; provided, however, that this definition shall not include the purchaser, owner, or mortgagee of any Unit.

1.1.16. "Development" means the mixed use residential and commercial community constructed or to be constructed upon the Property or Added Property or portions thereof.

1.1.17. "Development and Landscape Review Board" or "DLRB" means the individuals designated by the Association to review and approve Development Activity, as defined in Section 3.1, below.

1.1.18. "Lot" means any Property that is platted of record and intended for development of one (1) residential dwelling, such as a townhouse, cluster home, patio or zero lot line residence, or single-family detached residence.

1.1.19. "Managing Agent" means any entity retained by the Association to manage the Area of Common Responsibility, or portions thereof, and supervise its maintenance and the operation of the administrative affairs of the Association.

1.1.20. "Non-Residential Unit" means an improved portion of the Property, for which a final certificate of occupancy for non-residential use has been approved by the governmental authority having jurisdiction thereof, and which is held under one ownership (which may include, without limitation, ownership by co-tenancy, joint tenancy or tenancy-in-common) which is designated on the final site plan (or related submissions) approved by the governmental authority having jurisdiction thereof to be used for non-residential uses, such as, without limitation, hotels, offices, retail and other commercial establishments, industrial and institutional uses, medical and conference centers, and other commercial amenities, if any. The term excludes Common Area of the Association or any Subordinate Association, and Property dedicated to any utility company or public or quasi-public authority, agency, or service district, unless otherwise specified in the deed from the Declarant or the Association conveying such property or in another recorded document expressly approved by the Declarant. A "Non-Residential Unit" shall exist at such time as a final certificate of occupancy for the non-residential use is approved by the governmental authority having jurisdiction thereof. The Association shall have the right to determine whether a Non-Residential Unit exists and how many Non-Residential Units exist at a particular time, subject to the provisions of this Declaration.

1.1.21. "Occupant" means any individual lawfully occupying any Unit, including, without limitation, any Owner, or family member, guest, invitee, licensee, or tenant.

1.1.22. "Owner" means any Person that owns fee simple title to any Unit located on the Property. "Owner" shall not mean (i) a mortgagee unless such mortgagee has acquired title to the Unit or (ii) any Person having a contract to purchase a Unit but to which title has not been conveyed of record.

1.1.23. "Parcel" means any portion of the Property and any Added Property subject to this Declaration, as further divided into smaller components, such as Lots, condominium units, apartment tracts, or commercial sites. No portion of the Property shall

be deemed a "Parcel" until such time as a final subdivision plat or condominium master deed for the units or structures thereon has been approved by the governmental authority having jurisdiction thereof, and such plat or condominium master deed has been recorded in the Office of the Register of Mesne Conveyances for Charleston County in accordance with applicable ordinances and laws.

1.1.24. "Person" means any individual or legal entity, as the context may reasonably require.

1.1.25. "Property" means all the land and improvements thereon described in Exhibit "A" attached hereto and any Added Property.

1.1.26. "Residential Unit" (or "Unit") means any improved portion of the Property for which a certificate of occupancy has been issued by the applicable governmental authority that (a) is intended for development, use, and occupancy as an attached or detached residence for one family, (b) may be independently owned and conveyed, and (c) is held under one ownership (which may include, without limitation, ownership by co-tenancy, joint tenancy or tenancy-in-common). "Residential Unit" includes, by way of illustration and not limitation, (a) Apartment Units, (b) townhouses, cluster homes, patio or zero lot line homes and single-family detached houses on separately platted Lots, and (c) Condominium Units. "Residential Unit" excludes Common Areas and Property dedicated to any utility company or public or quasi-public authority, agency, or service district unless otherwise specified in the deed from the Person conveying such property or in another recorded document, all of which shall be approved by the Declarant. Each residence shall constitute a separate Unit. The Association shall have the right to determine whether a Residential Unit exists and how many Residential Units exist at a particular time, subject to the provisions of this Declaration and the Master Declaration.

1.1.27. "Subordinate Association" means an association of Owners within one or more Parcels, as defined or created by a Subordinate Declaration, to provide for the orderly control, administration, maintenance or management of those Parcels.

1.1.28. "Subordinate Declaration" means any instrument or documents, and any amendments thereto, which is filed of record with respect to a Parcel or Parcels, and which creates an association of owners for such Parcel or Parcels and establishes covenants, conditions, easements, rules or restrictions with respect to the lots, dwellings, units or commercial sites or structures within such Parcel or Parcels.

1.1.29. "Unit" means a Nonresidential Unit or Residential Unit.

1.1.30. "Zoned Density" means the cumulative number of Residential Units

that are permitted to be developed on all real property approved by the City of Charleston, South Carolina for current or future portions of The Gardens of Whitney Lake planned development.

ARTICLE 2. PLAN OF DEVELOPMENT

2.1. GENERAL PLAN OF DEVELOPMENT

2.1.1. Responsibilities of Declarant

Declarant shall be responsible for causing the initial construction of (a) such primary roads within the Property as Declarant determines are required for effective circulation within the Property (the "Roads"), (b) primary drainage ways, main storm water lines, easements, and retention or detention ponds and lagoons serving the drainage needs of the Property, and (c) primary water, sanitary sewer, cable television and electrical and gas lines and facilities within the Property that are adequate to permit an Owner to obtain access thereto for the Unit of such Owner upon payment of standard deposits and service fees. The Declarant shall not be responsible for causing the construction of secondary lines or facilities needed to connect to Units to such primary lines and facilities. As long as Declarant has a Controlling Interest, Declarant shall have the right to dedicate the facilities listed in the preceding sentence, or any portions thereof, after completion, to the applicable public authority or public or private utility. After Declarant no longer has a Controlling Interest, the Board of Directors of Association shall have the right to dedicate such facilities, after completion, to the applicable public authority or public or private utility. All such facilities shall be built in conformity with the standards of applicable regulatory agencies. The Declarant shall have the right, but not the obligation, to construct, or cause to be constructed, such recreational amenities, gardens, greens, walkways, bicycle paths, signage, landscaping, street lighting, signage lighting, landscape lighting and other facilities in the Area of Common Responsibility as Declarant shall determine are appropriate. The Association shall have the right, but not the obligation, to use funds of the Association to construct, or cause to be constructed, such facilities.

2.1.2. Responsibilities of Parcel Developer

The Developer of a Parcel shall be responsible for causing the initial construction of the following: (a) such secondary roads within the Parcel as Developer determines are required for effective circulation within the Parcel, (b) secondary drainage ways, storm water lines, and retention or detention ponds and lagoons serving the drainage needs of the Parcel, (c) secondary water, sanitary sewer, cable television and electrical and gas lines and facilities within the Parcel that are adequate to permit the Owner of a Unit within the Parcel to obtain access to such services for the Unit upon payment of standard deposits or service fees, and (d) such recreational amenities, gardens, greens, walkways,

bicycle paths, signage, landscaping, street lighting, signage lighting, landscape lighting and other facilities to serve the Parcel as the Developer shall determine are appropriate. All such development shall be in substantial compliance with the plans approved by the Development and Landscape Review Board and the requirements of the City of Charleston or any other applicable regulatory agency, but the Declarant and the Association shall have no responsibility for failure of the Developer to comply with such plans or the requirements.

2.1.3. Conveyance of Common Area

2.1.3.1. By Declarant or Its Affiliate. The Declarant or its Affiliate may convey Common Area to the Association at any time, without approval by the Association, provided that the Property conveyed shall be free and clear of all liens or encumbrances that would materially and adversely affect the use of the Common Area for its intended purpose (other than those liens or encumbrances expressly accepted by the Association). Unless otherwise expressly approved by the Association, the Declarant or its Affiliate shall convey all Common Areas owned by the Declarant or its Affiliate to the Association no later than one hundred eighty (180) days after the date of closing the sale or conveyance of the last Unit in the Property; provided, however, the Declarant or its Affiliate shall convey any Common Area within the Property at an earlier date if required by a governmental agency having jurisdiction over the Property (such as the Veterans Administration or Federal Housing Administration).

2.1.3.2. By Other Developers. A Developer other than the Declarant or its Affiliate may convey Common Area to the Association at any time, provided that (a) the conveyance shall be expressly approved in writing by the Declarant or the Association and (b) the Property conveyed shall be free and clear of all liens or encumbrances that would materially and adversely affect the use of the Common Area for its intended purpose (other than those liens or encumbrances expressly accepted by the Association). Unless expressly approved by the Association, the Developer shall convey all Common Areas owned by the Developer to the Association no later than one hundred eighty (180) days after the date of closing the sale or conveyance of the last Unit in the Parcel; provided, however, the Developer shall convey any Common Area within the Parcel at an earlier date if required by a governmental agency having jurisdiction over the Property (such as the Veterans Administration or Federal Housing Administration). Upon conveyance, the Developer shall promptly provide a copy of the conveyance documents to the Association.

2.1.4. Subjecting Added Property to the Declaration

The Declarant or its Affiliate may subject Added Property to this Declaration at any time, without approval by the Association. Any other owner of proposed Added Property

may apply to the Association to have the proposed Added Property made subject to this Declaration. Upon approval of the Board of Directors of the Association, the owner of the Added Property and the Association shall execute a Supplemental Declaration subjecting said Added Property to this Declaration and to such other terms and conditions as shall be required by the Association as a condition of such approval.

ARTICLE 3. DEVELOPMENT AND LANDSCAPE REVIEW

3.1. DEVELOPMENT ACTIVITY REQUIRING REVIEW

Unless otherwise expressly permitted in writing by the Declarant, the Board of Directors or the Development and Landscape Review Board, all Development Activity shall be approved, in writing, by the Development and Landscape Review Board prior to commencement of Development Activity. "Development Activity" shall mean (a) any clearing, grading or excavation; (b) removal or severe pruning of a tree having a trunk diameter greater than four (4) inches at one (1) foot above surrounding grade; (c) construction or modification of any residence, building, fence or wall, pool, fountain, terrace, patio, deck, road, walkway, antennae, exterior lighting, or other structure on the Property, and (d) landscaping of exterior areas. The Board of Directors or Development and Landscape Review Board may delegate in writing some or all of its authority for review of such Development Activity to any Person or Persons, including the Board of Directors of any Subordinate Association or any architectural review entity which may be established by such Subordinate Association. The Developer of a Parcel may also impose additional restrictions on such Parcel if such restrictions do not conflict with the Development and Landscape Standards, in the opinion of the Development and Landscape Review Board.

3.2. COMPLIANCE WITH DEVELOPMENT AND LANDSCAPE STANDARDS

The Development and Landscape Review Board may establish Development and Landscape Standards and related procedures for the Property and different types of Development on the Property from time-to-time. Each Owner shall comply and cause its agents to comply with the Development and Landscape Standards then applicable. Various portions of the Property may be intended for residences and structures of different types, cost, quality, complexity, motifs, architectural concepts and density, so there shall be no requirement that the procedures and policies for review of all structures and Development Activity within the Property be identical, or that the architectural and/or landscape design standards for various Parcels be identical. The Development and Landscape Review Board may, in its sole discretion, modify or waive established procedures and policies, or architectural and/or landscape design standards, in order to deal with hardships or new or unique issues, or for other purposes determined by the Development and Landscape Review Board to be in the best interests of the Association.

3.3. COMPOSITION OF DEVELOPMENT AND LANDSCAPE REVIEW BOARD

As long as the Declarant has a Controlling Interest in the Property, the number of Persons composing the Development and Landscape Review Board shall be determined by the Declarant or its designee. Thereafter, the number of Persons composing the Development and Landscape Review Board shall be determined by the Board of Directors of the Association. A member of the Development and Landscape Review Board need not be an Owner. The Development and Landscape Review Board may also select such non-voting advisors or consultants as it may determine are useful in evaluating a submission for Development Activity. Until otherwise determined by the Declarant, The Lisi Company or its designee(s) shall serve as the Development and Landscape Review Board.

3.4. ENFORCEMENT

The Declarant, the Association and the Development and Landscape Review Board shall have authority to monitor Development Activity and to halt or require modification of Development Activity not executed in accordance with approved plans, the Development and Landscape Standards, or this Declaration. Enforcement shall occur in accordance with Section 8.3 of this Declaration.

3.5. OBTAINING COPY OF DEVELOPMENT AND LANDSCAPE STANDARDS

A copy of the current Development and Landscape Standards and/or any current review procedures or policies which apply to a particular Parcel or portion of the Property shall be provided to any Owner by the Association upon written request to the Development and Landscape Review Board, in care of the Association, as set forth in Section 8.11 of the Declaration. The Association may charge a reasonable fee to cover the delivery, administrative and reproduction costs of providing such materials.

3.6. FEES FOR REVIEW OF DEVELOPMENT ACTIVITY

The Board of Directors may establish a schedule of fees for review or inspection of Development Activity in order to cover the reasonable costs to the Development and Landscape Review Board or the Association regarding such matters, such as administrative and operating expenses, storage of materials, consultation, site inspections; etc.

3.7. DEPOSITS FOR PROPER PERFORMANCE OF DEVELOPMENT ACTIVITY

The Board of Directors may establish a schedule of deposits to be paid by an Owner prior to commencement of Development Activity. The purpose of such deposits may include, without limitation, to provide adequate funds to ensure compliance with approved plans and conditions for Development Activity or applicable rules and regulations; installation of required landscaping; placement and collection of trash containers and removal of trash from the site; enforcement of parking rules and regulations; enforcement of restrictions regarding work hours; etc. Upon completion of

the Development Activity, any unused deposits shall be refunded to the depositing Owner or such Owner's designated assignee.

3.8. NO LIABILITY FOR DEVELOPMENT ACTIVITY REVIEW

Neither the Development and Landscape Review Board, the Declarant, the Board of Directors, the Association, nor any Person who is a member, officer, or employee of such entity, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Development and Landscape Review Board or any entity to which the Development and Landscape Review Board has delegated responsibility, nor for any defects in any work done according to such plans and specifications. Further, such Persons shall not be liable for damages to any Person submitting plans or specifications for approval under this Section, or to any Person affected by such plans, specifications, approval or disapproval as a result of mistake of judgment, negligence or non-feasance arising out of, or in connection with, the good faith approval or disapproval or failure to approve or disapprove any such plans or specifications.

ARTICLE 4. PROPERTY RIGHTS

4.1. EASEMENTS FOR DECLARANT

During the period that Declarant or any Affiliate owns any of the Property, or until such earlier time as Declarant records a Supplemental Declaration relinquishing all or part of its rights as set forth in this section, Declarant shall have an assignable, alienable and transferable right and easement on, over, through, under, and across the Common Area and Area of Common Responsibility for the purpose of constructing, installing, maintaining, repairing and replacing such other improvements to the Property as Declarant desires. Except in situations that may then reasonably be thought to be emergencies or situations in which access may be needed to prevent damage to the Property, or unless otherwise expressly approved by the Owner(s) of the Property directly affected thereby, this easement shall be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner(s) directly affected thereby.

4.2. EASEMENTS FOR ASSOCIATION

The Association and its directors, officers, agents and employees, including, but not limited to, any Managing Agent of the Association and any officers, agents and employees of such Managing Agent, shall have a general right and easement to enter upon the Property in the performance of their respective duties. Except in situations that may then reasonably be thought to be emergencies or situations in which access may be needed to prevent damage to the Property, or unless otherwise expressly approved by the Owner(s) of the Property directly affected thereby, this easement shall be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner(s) directly affected thereby.

4.3. CHANGES IN BOUNDARIES: ADDITIONS TO COMMON AREAS

So long as the Declarant holds a Controlling Interest, Declarant reserves the right and power, without the approval of the Association, to change the boundary lines between any Common Area and other Property owned by Declarant or any Affiliate or to add portions of the Property to the Common Areas.

4.4. EASEMENTS FOR LANDSCAPING, UTILITIES AND SERVICES

The Association and the Declarant shall each have a transferable, perpetual power and authority to grant and accept easements to and from any Person upon, over, under and across the Common Area or any Area of Common Responsibility. The easement(s) granted may be for constructing, installing, maintaining, repairing, inspecting and replacing master television antennae or television cable systems, data transmission systems, security and similar systems, landscaping, and all utility facilities and services, including, but not limited to, water, cable television or other telecommunications media, sanitary sewer, storm water, electrical, gas and telephone, lines and facilities. Such easements may be granted or accepted by Declarant or Association without notice to Owners. The Association may not grant such easements over Property owned by the Declarant or its Affiliates without the express written permission of the Owner. To the extent feasible, as determined by the entity granting the easement, all utility lines serving the Property and located therein shall be located underground. Unless permitted by the terms of the easement, no structure shall be erected, no paving shall be laid (other than driveways, entrances, causeways, or paths crossing the easement area), and no trees shall be planted in such easement without the written consent of the grantee of the easement.

4.5. GOVERNMENTAL EASEMENT AND USE OF ROADS

Except as expressly determined by written resolution of the Board of Directors, police, fire, water, health and other authorized governmental officials, employees and vehicles shall have the right of unrestricted ingress and egress to the Common Areas and Area of Common Responsibility, and any portion thereof, for the performance of their official duties. In order to provide for safe and effective regulation of traffic, the Board of Directors shall have the right to file of record the appropriate consent documents making applicable to the Roads, or portions of the Roads, the Uniform Act Regulating Traffic on Highways of South Carolina, South Carolina Code of Laws, Chapter 5, Title 56, as it may be amended from time-to-time (the "Traffic Act"). The Board of Directors also may issue from time-to-time additional parking and traffic rules and regulations to supplement the Traffic Act.

4.6. EASEMENTS FOR ENCROACHMENTS

The Property is subject to the following easements for encroachments between Units and the Common Elements:

4.6.1. In favor of all Owners so that they shall have no legal liability if any part of the Common Elements (including Limited Common Elements) encroaches upon a Unit or other Common Elements;

4.6.2. In favor of the Owner of each Unit so that the Owner shall have no legal liability if any part of such Owner's Unit encroaches upon the Common Elements or upon another Unit; and

4.6.3. In favor of all Owners, the Association, and the Owner of any encroaching Unit for the maintenance and repair of the encroachments referenced above.

Encroachments referred to this Section include, but are not limited to, encroachments caused by error, omission or variance from the original plans in the construction of the Common Elements or any Unit; by settling, rising, or shifting of the earth; or by changes in position caused by repair or reconstruction of any part of the Common Elements or any Unit.

ARTICLE 5. THE ASSOCIATION

5.1. GOVERNANCE

The Association shall not have any members, but shall be governed by a Board of Directors selected as set forth herein. The Board of Directors shall function in accordance with this Declaration and the Bylaws, and all Owners and Subordinate Associations shall be bound by this Declaration and the Bylaws. The Bylaws may be amended, from time to time, only as provided herein. The Board of Directors shall constitute the final administrative authority of the Association and shall have authority to take all actions on behalf of the Association that do not require by law or this Declaration a vote by Owners. All decisions of the Board of Directors shall be binding upon the Association and the Owners. Unless otherwise expressly stated by this Declaration or the Bylaws, all rights, titles, privileges and obligations vested in or imposed upon the Association shall be held and performed by the Board of Directors.

5.2. SELECTION OF BOARD OF DIRECTORS

5.2.1. Prior to Loss of Controlling Interest by Declarant

While Declarant has a Controlling Interest, the Board of Directors shall consist of not less than three (3) or more than five (5) individuals, as determined by Declarant from time-to-time. Such individuals need not be Owners of Units or own any interest in a Unit.

5.2.2. After Loss of Controlling Interest by Declarant

When Declarant no longer has a Controlling Interest, the Board of Directors shall consist of such number of individuals as may be selected in accordance with the Bylaws. Such selection shall occur within one hundred twenty (120) days after Declarant no longer

has a Controlling Interest.

5.3. RULES AND REGULATIONS

The Board of Directors shall have the authority from time to time to adopt rules and regulations governing the use, administration and operation of the Common Areas and Area of Common Responsibility, subject to the terms of this Declaration and the Bylaws. The initial Rules and Regulations are attached hereto as Exhibit C.

5.4. INDEMNIFICATION OF BOARD, OFFICERS AND MANAGING AGENT

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

5.5. BOARD, MANAGING AGENT AND OFFICERS ACT FOR ASSOCIATION

Unless otherwise expressly indicated in writing, and in the absence of fraud, bad faith or gross negligence, all contracts and agreements on behalf of the Association by the Board of Directors, the Managing Agent or the officers of the Association shall be deemed executed as agent for the Association.

5.6. BOARD OF DIRECTORS DETERMINATION BINDING

If a disagreement arises between Owners or among or between the Association, a Subordinate Association, Owners and/or Declarant, related to the Area of Common Responsibility or the interpretation and application of this Declaration, the Bylaws, the Development and Landscape Standards, or any rules and regulations of the Association, the decision of the Board of Directors regarding the proper disposition of such matter shall be final and binding upon the entities involved and the Association unless such decision is clearly in violation of this Declaration, the Bylaws, the applicable rules and regulations, or applicable law.

5.7. MANAGEMENT

The Board of Directors may, in its discretion, retain one or more Managing Agents or employees of the Association to manage the Common Area and Area of Common Responsibility and supervise its maintenance and operation and the operation of the administrative affairs of the Association. The terms of any management or employment agreements shall be approved by the Board of Directors, provided that any management

or employment contracts shall (i) permit the termination thereof for cause by the Association upon not more than 60 days prior written notice; and (ii) be for a period of not more than five (5) years. Such contracts may permit renewals thereof for periods not to exceed five (5) years per renewal provided that such renewal is approved by the parties. Nothing herein shall prohibit the Association from entering into a management contract with the Declarant or any Affiliate of the Declarant if the terms of such contract are reasonable and consistent with the above provisions.

5.8. INSURANCE

5.8.1. Types of Insurance

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

- A. loss or damage by fire, flood, earthquake or other casualty covered by standard extended coverage policies. The insurance shall be for the full insurable value thereof (based upon current replacement cost); provided that flood coverage may be limited to the amount available through federal flood insurance programs.
- B. risks as vandalism, theft and malicious mischief;
- C. comprehensive general public liability and, if applicable, automobile liability events, covering loss or damages resulting from accident or occurrences on or about the Common Area or elsewhere;
- D. worker compensation or other mandatory insurance, if applicable;
- E. infidelity insurance by employees or officers of the Association or the Managing Agent having access to any substantial funds of the Association;
- F. claims brought against the Board of Directors or officers of the Association acting in such capacity; and for
- G. such other events or risks as the Board of Directors shall determine to be reasonable and desirable from time to time.

5.8.2. Other Insurance Criteria

All insurance premiums shall be a Common Expense. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds for such insurance shall be payable to, the Association. The insurance coverage shall, if feasible, provide that:

- A. the interest of the Association shall not be invalidated by any act or neglect of any Owner or any officer or member of the Board of Directors of the Association;
- B. the coverage shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Association; and
- C. subrogation shall be waived with respect to the Association and its Board of Directors, employees and agents, and Owners, members of their household and mortgagees.

5.8.3. Appointment of Trustee for Proceeds

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

5.8.4. Reconstruction of the Property

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

5.8.5. Power of Attorney

Each Owner hereby irrevocably constitutes and appoints the Board of Directors and any trustee, or either of them, as such Owner's true and lawful attorney-in-fact for the purpose of dealing with any matters arising under this Section 5.8, with authority to execute all documents with respect to the interest of the Owner that may be necessary or appropriate.

5.9. BOOKS AND RECORDS

Current financial records of the Association and a copy of this Declaration and the articles of incorporation, Bylaws, and Rules and Regulations of the Association shall be available for inspection by an Owner or any agent authorized in writing by an Owner,

at the offices of the Association or such other location in Beaufort County as may be designated by the Association. Materials obtained as a result of any inspection by an Owner or its agent shall not be used for purposes not clearly related to such Owner's Unit or the Association. The inspection shall occur at reasonable times during normal business hours. The Association shall have the right to require written notice of the particular records to be inspected not more than five (5) business days prior to the inspection date (or such longer period as may be reasonable if the records sought are not readily available). The inspection shall be scheduled and conducted in such a manner that the operations of the Association are not unduly disrupted and the safety and integrity of the records are ensured. The Association may charge a reasonable fee to cover the reproduction, postage and administrative expenses incurred by the Association as a result of an inspection.

ARTICLE 6. ASSESSMENTS AND CHARGES

6.1. REGULAR ASSESSMENTS AND BUDGET

6.1.1. Fiscal Year and Annual Budget

The fiscal year of the Association shall be the calendar year. Unless otherwise determined by the Board of Directors, the Board of Directors shall prepare or cause to be prepared by December 1 an operating budget (the "Budget") for the next fiscal year. The Budget shall set forth the estimated Common Expenses and anticipated revenues of the Association for such fiscal year, and any projected deficit or surplus from the preceding fiscal year. The Budget, once approved by the Board of Directors, shall serve as the basis for Regular Assessments to all Owners (the "Total Assessments") for such fiscal year and the primary guideline under which the Association shall be projected to be operated during such fiscal year. If the Board fails for any reason to adopt a Budget for the fiscal year, then until such time as it is adopted, the Budget and Regular Assessments in effect for the current year shall automatically be increased effective the first day of the fiscal year in the same proportion as any percentage increase during the current Year over the preceding Year, in the Consumer Price Index, all Urban Consumers, United States City Average, All Items (the "CPI") or its successor index, as determined by the Board of Directors. In order to provide time to determine any applicable increase, the "Year" for determining the CPI shall be measured from October 1 through September 30. Such adjusted Budget shall be the Budget for the succeeding year, until a new Budget is adopted. The Board of Directors shall endeavor in good faith to cause an unaudited or audited financial statement, as the Board shall determine, of the Association (the "Annual Report") to be prepared by a public accountant licensed to practice in the State of South Carolina within ninety (90) days following the close of the Association's fiscal year. Upon request, a copy of the Annual Report shall be provided to any Owner of any Unit that is subject to Regular Assessments.

6.1.2. Determining the Budget

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

6.1.3. Regular Assessments

Each Owner of a Unit shall pay Regular Assessments, as set forth below.

6.1.3.1. Regular Assessments for Residential Units. The Owner of each Residential Unit shall pay one (1) Assessment Share, as defined in Section 6.1.4., below. No Regular Assessment shall be payable solely for an undeveloped Lot. For Assessment purposes, a Residential Unit shall be deemed to exist at such time as a certificate of occupancy (or comparable evidence of completion) is issued by the applicable regulatory body. For Assessment purposes, a Condominium Unit shall be deemed to exist at such time as a master deed is recorded by the condominium regime in the Office of the Register of Mesne Conveyances for Charleston County and a certificate of occupancy (or comparable evidence of completion) is issued by the applicable regulatory body. The condominium regime for a Condominium Unit shall collect and pay to the Association all Assessments for all Condominium Units in the condominium regime unless the Association agrees, in writing, to collect such Assessments directly from the Owner of each Condominium Unit.

6.1.3.2. Regular Assessments for Non-Residential Units.

(A) The Owner of a Non-Residential Unit shall pay one (1) Assessment Share for each 2,000 square feet of enclosed gross floor area of Non-Residential improvements (measured from interior wall to interior wall), and any fraction thereof. For the purpose of Section 6.1.3.2 only, "improvements" shall mean any structure intended for non-residential use, as permitted by this Declaration and applicable laws, and for which a preliminary or final certificate of occupancy or completion has been issued or which is substantially complete as determined by

the general contractor or architect, whichever is earlier. The term "improvements" shall not include parking lots, parking garages, pathways, roadways or driveways, landscaped areas, patios, free-standing non-habitable utility facilities, and such other elements as may be approved in writing by the Association.

For example, a two story non-residential building containing 10,000 square feet of enclosed gross floor area shall be assigned five (5) Assessment Shares.

6.1.4. Calculating the Regular Assessments

To determine the number of Assessment Shares and the allocable Regular Assessment for each type of Unit for the fiscal year, the Board of Directors shall:

A. Determine the total number of Residential Units existing at the beginning of the applicable fiscal year. This total is the "Assessed Residential Units." Multiply the number of Assessed Residential Units by one (1).

B. Determine, in accordance with Section 6.1.1.4, the Assessment Shares allocable to Non-Residential Units.

C. Determine the sum of A and B. This constitutes the "Total Assessment Shares".

E. Divide the required Budget revenues from Regular Assessments for the fiscal year by the Total Assessment Shares to determine the amount of one (1) Assessment Share. Each Residential Unit will pay one (1) Assessment Share. Non-Residential Units will pay the appropriate Assessment as calculated in Section 6.1.3.2.

Example: Assume that the required Budget revenues from Regular Assessments for the forthcoming fiscal year is \$50,000; (ii) there are 200 Assessed Residential Units, and (iii) the Assessment Shares allocable to Non-Residential Units has been determined to be 25. The Total Assessment Shares are (a) 200 for Residential Units (200 times 1), plus (b) 25 for Non-Residential Units, or (c) a total of 225 Assessment Shares. Thus, each Assessment Share for the year is \$50,000 divided by the number of Total Assessed Units (225), or \$222.22.

NOTE: The Assessment calculations shown provide a mathematical example only. They are not intended to be estimates of the number of Units of different types or the actual Assessment which may be applicable from time to time.

6.1.5. Regular Assessments for Units Not Existing at Beginning of Fiscal Year

If a Unit is created after the beginning of the fiscal year, then the applicable

Regular Assessment for such Unit shall be pro-rated and shall be payable for the balance of the current fiscal year beginning on the first calendar day of the month following the creation of such Unit. To determine when a Unit is deemed to be created, see 6.1.3.

6.1.6. Assessments for Units Owned by Declarant

Declarant and Affiliates of Declarant shall pay Assessments on Units owned by them in the same manner as other Unit Owners; provided, however, that the Declarant may elect, in lieu of paying Assessments, to contribute to the Association from time to time such funds as may be required to offset any operating deficit of the Association which exists after subtracting Common Expenses incurred during the year from all Assessments and other revenues received during the year. Unless otherwise approved by the Declarant, this obligation of the Declarant shall not include any deficit caused by Common Expenses that were not budgeted at the beginning of the Fiscal Year. Unless the Declarant notifies the Association otherwise by March 1 of the applicable fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the preceding fiscal year.

6.1.7. Notice and Payment of Regular Assessments

6.1.7.1. Notice. Unless the Board of Directors elects a shorter payment period, the Regular Assessments shall be due on a monthly basis in advance. Unless otherwise determined by the Board of Directors, the Association shall, by December 15, furnish to each Owner of a Unit a copy of the Budget for the forthcoming fiscal year and a statement of the amount of the Assessment payable by such Owner. The Association may send such information as is applicable to Owners in a Subordinate Association or condominium regime directly to such Subordinate Association or condominium regime, and the Subordinate Association or condominium regime shall act as the Assessments communication, billing and collection agent for the Owners in such Subordinate Association or condominium regime.

6.1.7.2. Payment.

(A) Unless otherwise expressly approved by the Board of Directors, Regular Assessments shall be payable by first calendar day of the month for which the Regular Assessment is applicable. If a Regular Assessment period other than monthly is approved by the Board of Directors, Regular Assessments shall be payable by first calendar day of such period.

(B) Notwithstanding (A) above, if Regular Assessments have not already been paid for such Unit, in order to minimize administrative costs for the Association, at closing of the initial purchase of each Unit, the purchaser of such Unit shall pay to the Association the Regular Assessment for the next full Regular Assessment Period, plus a pro-rata share of the Regular Assessment for one (1) month that is allocable to the number of days remaining in the month in which

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closing occurs. No payment at closing shall be necessary if the Seller has pre-paid the Regular Assessment. For a Unit that is not built for sale upon completion, but is built for occupancy by the Owner or lease to others, such payment shall be made by the Owner within fourteen (14) days after issuance of a certificate of occupancy for the Unit. Such advance payments shall be credited against the Regular Assessment payable by the Unit.

Example: Assume that the pro-rated Regular Assessment for the Unit being closed equals \$100 per month. Closing occurs on April 15. The payment to the Association shall be (a) \$100 for May, plus (b) one-half (30 days divided by 15 remaining days = one-half) of \$100, for a total of \$150.

6.2. SPECIAL ASSESSMENTS

6.2.1. Special Assessments by Board of Directors

In addition to the Regular Assessments authorized above, the Board of Directors may levy one or more Special Assessments to cover the cost of any unbudgeted property taxes or assessments or, in the event of an insured loss or event, any deductible amount under the insuring policy. (Special Assessments for Apartment and Non-Residential Units shall be in the same proportion as the portion of the Assessment Share which is allocable to such Units, as set forth in Section 6.1.3)

6.2.2. Special Assessments for Specific Owners

In addition to the Special Assessments referenced in Section 6.2.1, the Board of Directors may levy Special Assessments against a specific Unit (i) at the request of a Unit Owner to cover the costs of providing services to or on behalf of a specific Unit, or (ii) as the result of the failure of an Owner or Occupants of the Unit, their agents, guests, invitees or licensees, to execute any responsibility they may have under this Declaration, the Bylaws, the Rules and Regulations, or the Development and Landscape Standards.

6.2.3. Special Assessments by Owners

Any other Special Assessment in excess of those permitted by Sections 6.2.1 and 6.2.2 shall require the approval of the Board of Directors and the approval of Units representing a majority of the Total Assessment Shares, as determined in Section 6.1.4. Votes of Owners may occur at a meeting or by written ballot in accordance with the Bylaws. The notice of the meeting or the ballot shall state generally the purpose and amount of the proposed Special Assessment.

6.2.4. Date for Payment of Special Assessments

Special Assessments shall be payable by the date determined by the Board of Directors, but no earlier than fourteen (14) days after notice of such Assessment shall have been given to the Owner in accordance with the procedure set forth in Section 7.11

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of this Declaration.

6.3. ASSOCIATION WORKING CAPITAL ASSESSMENTS

6.3.1. General Description and Purpose

A "Working Capital Assessment" shall be paid to the Association for each Unit. The Working Capital Assessment shall be used by the Association for its regular operations and/or reserves, as determined by the Board of Directors. In the event of non-payment of the Working Capital Assessment, the amount due shall bear interest and shall be collected as a Special Assessment pertaining to that Unit only.

6.3.2. Amount of Working Capital Assessment

The Working Capital Assessment shall be equal to the pro-rated Regular Assessment, for the fiscal year of the Association in which the payment is due, that is allocable to one (1) month. (See Section 6.1.3.)

Example: Assume that the pro-rated annual Regular Assessment for the Unit equals \$100 per month. The Owner of the Unit shall pay \$200 to the Association (two months X \$100).

6.3.3. Time of Payment

The Working Capital Assessment shall be paid to the Association as follows: (i) for a Residential Unit other than an Apartment Unit, by the purchaser at closing of the initial purchase of the Unit, and (ii) for an Apartment Unit, Non-Residential Unit, and a Residential Unit that is not built for sale upon completion, but is built for occupancy by the Owner or lease to others, by the Owner within fourteen (14) days after issuance of a certificate of occupancy for the building(s). The Association may require the purchasing and/or selling or leasing Owner to provide reasonable written proof of the event triggering payment of the Working Capital Assessment, such as a copy of an executed closing statement, certificate of occupancy, deed, or other such evidence.

6.3.4. Exceptions for Working Capital Assessments

No Working Capital Assessment shall be payable for (a) a conveyance to a mortgagee pursuant to a foreclosure or deed in lieu of foreclosure, or (b) such other exceptions as the Board of Directors of the Association shall approve in writing, in its sole discretion.

6.4. STATEMENT OF ACCOUNT

Upon written request of any Owner, mortgagee, lessee, prospective mortgagee, or prospective purchaser or lessee of a Unit, the Association shall issue a written statement (which shall be conclusive upon the Association) setting forth the following:

- A. The amount of any unpaid Regular Assessment, Special Assessment and Working Capital Assessment, if any, applicable to such Unit.

B. The amount of the current Regular Assessment and any current Special Assessment and the date or dates upon which any payment thereof shall become due.

C. The amount of any credit for advance payments of Regular Assessments or Special Assessments.

The Board of Directors may require payment of a reasonable fee to cover the administrative and personnel costs of providing the written statement.

6.5. EFFECT OF NON-PAYMENT OF ASSESSMENTS

Any Assessment that is not paid to the Association when due shall be delinquent. Thereupon, the Association may enforce its rights in accordance with Section 8.3. Unless waived for good cause, as determined in the sole discretion of the Board of Directors, all delinquent Assessments shall incur an administrative charge of five percent (5%) of the amount due, plus interest on the amount due at a rate of one and one half percent (1.5%) for each month or portion of any month from the date such amount is due until payment is received by the Association. No Owner may waive or otherwise escape liability for the Assessments by non-use of the Common Area or abandonment of his Unit.

6.6. CREATION OF LIEN

All Assessments, interest and charges thereon, and all costs of collection thereof (including reasonable attorneys' fees and expenses) shall be (i) the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment fell due and, unless expressly agreed by the Board of Directors of the Association, also of any subsequent Owner, (ii) a charge on the Unit to which such assessments are applicable and (iii) a continuing lien upon each Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Section, the Association may prepare a written notice of lien setting forth the amount of the unpaid Assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or any Managing Agent of the Association and may be recorded in the office of the Register of Mesne Conveyances for Charleston County. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced as set forth in Section 8.3.

6.7. SUBORDINATION OF THE LIEN

The lien of the Assessments provided for herein shall be subordinate to the lien of any unpaid taxes and any recorded mortgage on the applicable Unit. Sale or transfer of any Unit shall not affect the lien of the Assessments. However, the sale or transfer of any Unit which is subject to any recorded mortgage, pursuant to a decree of foreclosure under

such mortgage or any proceeding or conveyance in lieu of foreclosure thereof, shall extinguish the lien of the Assessments as to payment thereof, which became due prior to such sale or transfer. No sale or transfer shall relieve the Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

6.8. MECHANIC'S LIENS

The Board of Directors may cause to be discharged any mechanic's lien or other encumbrance which in the opinion of the Board of Directors may constitute a lien against the Common Area. If less than all of the Owners are responsible for the causing the lien, the Board of Directors may determine that the Owners who are responsible shall be jointly and severally liable for the amount necessary to discharge the same, and for all related costs and expenses, including attorney's fees and court costs, incurred by reason of the lien.

ARTICLE 7. CONDEMNATION

7.1. CONDEMNATION OF COMMON AREAS

Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association. Each Owner hereby irrevocably constitutes and appoints the Board of Directors and any trustee, or either of them, as such Owner's true and lawful attorney-in-fact for the purpose of dealing with any matters arising under this Section, with authority to execute all documents with respect to the interest of the Owner that may be necessary or appropriate. If the portion of the Common Area so taken or conveyed is improved in any way, then the Association shall repair, rebuild, replace or renovate the improvements so taken, to the extent practicable, on the remaining Property included in the Common Area which is available thereof, in accordance with plans approved by the Board of Directors. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and, in the opinion of the Board of Directors, such deficiency cannot or should not be funded from a reserve fund or regular Assessments, the Board of Directors may levy a Special Assessment against all Units in accordance with the procedure set forth in Section 6.2.

ARTICLE 8. GENERAL PROVISIONS

8.1. AMENDMENTS BY ASSOCIATION

Amendments to this Declaration, other than those authorized by Section 8.2 hereof, shall be adopted by a vote of not less than seventy-five percent (75%) of the then

existing Board of Directors. Notice of the proposed amendment shall be given to the Board in writing by a Director proposing the amendment and the notice shall contain a general description of the proposed amendment and the purpose of the proposed amendment. No amendment that imposes or reasonably could be construed to impose a greater economic or legal burden on Declarant than exists under the then current provisions of this Declaration shall be valid unless it is approved, in writing, by Declarant, and no amendment of the Declaration which is contrary to this statement shall be valid.

8.2. AMENDMENTS BY DECLARANT

Notwithstanding any other provision herein or in the Bylaws, Declarant may amend this Declaration without the consent of the Association, any Subordinate Association, any Owner, easement grantee, or any mortgagee if, in Declarant's opinion, such amendment is necessary to (i) bring any provision of the Declaration into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with this Declaration; (ii) enable any reputable title insurance company to issue title insurance coverage with respect to any Units subject to this Declaration; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to this Declaration; (iv) enable any governmental agency or mortgage insurance company to insure mortgages on the Units subject to this Declaration; (v) enable any insurer to provide insurance required by this Declaration; or (vi) clarify any provision of this Declaration or eliminate any conflict between provisions of this Declaration, including its Exhibits.

8.3. ENFORCEMENT

Each Owner and Subordinate Association shall comply strictly with this Declaration, the Bylaws and the published Rules and Regulations of the Association adopted pursuant to this Declaration, as they may be lawfully amended from time to time. Failure to comply shall be grounds for imposing fines, for instituting an action to recover sums due against a delinquent Owner, for damages and/or for injunctive relief or specific performance, or such other actions as are permitted by applicable law, including foreclosure of the lien against a delinquent Owner's Lot in the same manner in which a mortgage on real property may be foreclosed in the State of South Carolina. The Association shall have the right to bid in at any foreclosure sale, and, upon conveyance to the Association, thereafter hold, lease, mortgage, or convey the property foreclosed. Such actions shall be maintainable by the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Owner. If Declarant or the Association employs legal counsel to enforce any of the foregoing against an Owner or former Owner, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating party. Failure on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall not be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to any violation or breach occurring prior or subsequent

thereto. No right of action shall accrue in favor of nor shall any action be brought or maintained by any Person against Declarant or the Association for or on account of any failure to bring an action on account of any purported or threatened violation or breach by any Person of the provisions of this Declaration, the Bylaws, the Development and Landscape Standards, or any rules and regulations of the Association.

8.4. DURATION

The provisions of this Declaration, as amended from time-to-time, shall run with the land and be binding upon the title to the Property; shall be binding upon and inure to the benefit of all Owners, the Declarant, the Association, the Subordinate Associations and all mortgagees, and their respective heirs, executors, legal representatives, successors, and assigns, and successors in title; and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, provided any rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed for unlimited successive ten (10) year periods, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty (20) period or the last year of any ten (10) year renewal period, Units representing at least seventy-five percent (75%) of the Total Assessment Shares, as defined in Section 6.1.4., vote to terminate this Declaration. If this Declaration is terminated, an instrument evidencing such termination shall be filed of record in the records of the Register of Mesne Conveyances for Charleston County, South Carolina, such instrument to contain a certificate wherein the President of the Association affirms that such termination was duly adopted by the requisite number of votes.

8.5. PERPETUITIES

If any of the covenants, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Robert F. Kennedy.

8.6. INTERPRETATION

This Declaration shall be construed in accordance with the laws of the State of South Carolina. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The captions herein as to the contents of various portions of the Declaration are inserted only for convenience and are in no way to be construed as defining, limiting, extending or

otherwise modifying or adding to the particular provisions to which they refer. The effective date of this Declaration shall be the date of its filing for record in the office of the Register of Mesne Conveyances for Charleston County, South Carolina.

8.7. GENDER AND GRAMMAR

The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, limited liability companies or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

8.8. SEVERABILITY

The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of a Unit, and may not be severed or alienated from such ownership. 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 provisions which can reasonably be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

8.9. RIGHTS OF THIRD PARTIES

This Declaration shall be recorded for the benefit of Declarant, Owners, the Association, the Subordinate Associations, and their mortgagees, and by such recording, no other Person, including any adjoining property owner, shall have any right, title or interest whatsoever in the Property except as expressly provided herein, or in the operation of the Association or the Area of Common Responsibility or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant and mortgagees herein provided.

8.10. RIGHTS OF MORTGAGEES

Any holder, insurer or guarantor of the mortgage on a Unit (a "Mortgagee") may provide to the Association from time-to-time, in writing, current information regarding its mortgage interest in any Unit. Such information shall include the Unit number and address; the name of the Owner(s) of the Unit; the name, address, telephone and facsimile number of the Mortgagee and the name of a contact person or persons for the Mortgagee. If the interest of the Mortgagee is terminated or the interest of the Mortgagee is lawfully assigned to another entity, the Mortgagee shall promptly notify the Association of such termination or assignment, including comparable information regarding any assignee of its interest. Any Mortgagee that has provided such information to the Association shall have the right to request timely written notice by the Association of any delinquency exceeding 60 days in the payment of the Assessments or charges owed to

the Association by the Owner of the Unit securing the mortgage of such Mortgagee. If any request for approval or consent is sent by certified or registered mail to a Mortgagee at its address of record, by the Association or the Declarant, or its authorized agent, and no responsive written answer is received from the Mortgagee within fourteen (14) calendar days of such notice, then the approval or consent requested shall be deemed to have been given by the Mortgagee.

8.11. NOTICE OF CONVEYANCE, LEASE OR RENTAL

If an Owner conveys, leases, rents, or otherwise disposes of any Unit, the transferring Owner shall promptly furnish to the Association, in writing, the name and address of such transferee, lessee, or renter.

8.12. NOTICES

Notices required hereunder shall be deemed given when in writing and delivered by (a) hand, (b) private or public carrier that provides evidence of delivery, with delivery charges prepaid, (c) facsimile or internet transmission, in which event receipt shall be the date of confirmation of receipt by the addressee, (d) if the address is within the United States, three (3) calendar days after being deposited in the United States Mail, First Class, postage prepaid, or (e) certified mail, return receipt requested, postage prepaid, in which event receipt shall be the date the receipt is signed. All notices to Owners shall be delivered or sent to such delivery addresses or facsimile or internet addresses as have been provided in writing to the Association, or if no address has been provided, then at the address of any completed Unit that is owned by such Owner, or at the address then shown as that of the Owner of the Unit on the property tax records of Charleston County.

All notices to the Association shall be delivered or sent in care of the Association at:

The Gardens of Whitney Lake Association, Inc.
 c/o The Lisi Company
 80 Alexander Street
 Charleston, SC 29403

or to such other address as the Association may from time to time notify the Owners and the Declarant.

All notices to Declarant shall be delivered or sent in care of Declarant at:

Whitney Lake, LLC
c/o The Lisi Company
80 Alexander Street
Charleston, SC 29403

or to such other address as Declarant may from time to time notify the Association. Notices to mortgagees shall be delivered or sent to such addresses as such mortgagees specify in writing to the Association.

8.13. MANDATORY ARBITRATION

Any dispute between the Association or any Owner and the Declarant or its Members (including, without limitation, The Lisi Company) shall be subject to mandatory binding arbitration in accordance with the procedure set forth in Exhibit D to this Declaration.

8.14. SUCCESSORS AND ASSIGNS

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

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11 157516024

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 9th day of March, 2006.

WHITNEY LAKE, LLC
a South Carolina Limited Liability Company
By: The Lisi Company, Its Manager

WITNESS:

Lindsay Macmillan
Donald A. Furtado

John D. Lisi
BY: John D. Lisi, Its President

ACKNOWLEDGEMENT

I, Donald A. Furtado, a Notary Public for the State of South Carolina, hereby certify that John D. Lisi, who is known to me, personally appeared before me this day and acknowledged the due execution of the foregoing Declaration on behalf of Whitney Lake, LLC.

Witness my hand and official seal this 9th day of March, 2006.



(SEAL)

Donald A. Furtado
Notary Public for South Carolina

My commission expires: 12 Sept. 2011

EXHIBIT A: PROPERTY DESCRIPTION

ALL those pieces, parcels and tracts of land situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, containing approximately 21.227 aggregate acres, more or less, and being fully shown and delineated on a plat of survey (the "Plat") made by G. Robert George and Associates, Inc. titled "FINAL SUBDIVISION PLAT PHASE 1A WHITNEY LAKE DEVELOPMENT TMS 312-00-00-330 OWNED BY WHITNEY LAKE, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA", dated July 18, 2005, and recorded in the RMC Office for Charleston, South Carolina on August 19, 2005 in Plat Book EJ at pages 160 through 163.

Areas designated on the Plat as "Neighborhood Greens" and "H. O. A" areas are subject to this Master Declaration but all H. O. A. areas other than Neighborhood Greens are Common Areas of the Whitney Lake Townhome Association, Inc.

LESS AND EXCEPT those areas shown on the Plat as existing or future street rights of way.

SAID tracts of land having such size, shape, dimensions and boundaries as will by reference to said plat more fully appear.

11 1575P6826

EXHIBIT B: BYLAWS

THE GARDENS OF WHITNEY LAKE ASSOCIATION, INC.

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**BYLAWS OF
THE GARDENS OF WHITNEY LAKE ASSOCIATION, INC.
A South Carolina Nonprofit Mutual Benefit Corporation**

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act, the Board of Directors of The Gardens of Whitney Lake Association, Inc., a South Carolina nonprofit mutual benefit corporation, hereby adopts the following Bylaws for such corporation.

**ARTICLE I
NAME AND PRINCIPAL OFFICE**

- 1.1. Name. The name of the nonprofit corporation is "The Gardens of Whitney Lake Association, Inc.", hereinafter referred to as the "Association".
- 1.2. Offices. The principal offices of the Association shall be in Charleston County, South Carolina.

**ARTICLE II
DEFINITIONS**

2.1. Definitions. Except as otherwise provided herein or required by the context hereof, all capitalized terms used herein and defined in the Declaration of Covenants, Conditions and Restrictions for The Gardens of Whitney Lake Association, Inc., recorded in the office of the Register of Mesne Conveyances for Charleston County concurrently with these initial Bylaws, and all amendments or Supplemental Declarations thereto filed for record from time to time in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina (hereinafter cumulatively referred to as the "Declaration"), shall have such defined meanings when used in these Bylaws.

**ARTICLE III
OWNERS**

- 3.1. No Members. Pursuant to the Declaration and Articles of Incorporation, the Association shall not have members. Because of the authority vested in the Board of Directors, the rights and authority of Owners are limited to the extent set forth in the Declaration and these Bylaws and are not synonymous with the term "member" as set forth in SC Code Section 33-31-10 et seq.
- 3.2. Notice by Owners. Upon acquiring title to a Unit subject to the Declaration, the Owner of such Unit shall (a) promptly furnish to the Association a legible copy of the recorded instrument by which ownership of such Unit has been vested in the Owner,

which copy shall be maintained in the records of the Association, and (b) provide to the Association the delivery address, telephone number, and, if available, the facsimile number and internet address of such Owner. If an Owner leases, or rents its Unit, or any portion thereof, the Owner shall promptly furnish to the Association, in writing, the name and delivery address, telephone number, and, if available, the facsimile number and internet address of such lessee or renter.

3.3. Voting by Owners. In any situation in which a vote of Owners is required, each Owner shall be entitled to cast votes equal to the number of Assessment Shares owned by such Owner (see Section 6.1.3 of the Declaration). The Board of Directors shall determine whether the vote of Owners shall be (i) by written ballot distributed to the Owners without a meeting, or (ii) by vote at a meeting of the Owners at which a quorum is present in person or by written proxy. If by written ballot without a meeting, the Board of Directors shall determine the form of the written ballot and the ballot or accompanying materials shall state a date by which the ballot must be returned to the Association in order to be counted. If the vote is at a meeting of the Owners, notice in accordance with these Bylaws shall be given to all Owners that a meeting shall be held at a designated time and place in Charleston County not earlier than ten calendar (10) days after the date such notice is given.

3.4. Authority of Person Voting for Owner. The Board shall have the authority to determine, in its sole discretion, whether any Person claiming to have authority to vote for an Owner has such authority. If the Owner is a corporation, partnership, limited liability company, trust, or similar entity, the Association may require the Person purporting to vote for such Owner to provide reasonable evidence that such Person (the "Representative") has authority to vote for such Owner. Unless the authority of the Representative is challenged in writing at or before the time of voting, or is challenged orally at the time of voting, however, the Association may accept such Representative as a Person authorized to vote for such Owner, regardless of whether evidence of such authority is provided.

ARTICLE 4 BOARD OF DIRECTORS

4.1. General Powers. The Board of Directors shall manage the property, affairs, and business of the Association. The Board may exercise all of the powers of the Association, whether derived from law, the Declaration, the Articles of Incorporation, the Rules and Regulations, or these Bylaws, except such powers as are expressly vested in another Person by such sources. As more specifically set forth in the Declaration, the Board shall constitute the final administrative authority of the Association, and all decisions of the Board shall be binding upon the Association. The Board may by written contract delegate, in whole or in part, to a Management Agent or Agents, such of its

duties, responsibilities, functions, and powers, or those of any officer, as it determines are appropriate.

4.2. Number, Tenure, and Qualifications.

4.2.1 For so long as Declarant owns a Controlling Interest (as defined in the Declaration), the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as designated by Declarant from time-to-time. Such Directors need not be Owners of Units.

4.2.2. At such time as the Declarant no longer has a Controlling Interest, or such earlier time as the Declarant records a Supplemental Declaration waiving its authority to designate the Board, the successor Board shall be selected as follows:

A. The successor Board shall consist of five (5) individuals. Initially, one (1) Director shall be elected for a one (1) year term, two (2) Directors shall be elected for a two (2) year term, and two (2) Directors shall be elected for a three (3) year term. The two (2) individuals receiving the highest number of votes shall be elected to the three (3) term, the two (2) individuals receiving the next highest number of votes shall be elected to the two (2) year term, and the individual receiving the next highest number of votes shall be elected to the one (1) year term. It is not necessary that a Director be an Associate

B. Thereafter, in the absence of the resignation or replacement of a Director (in which case the replacement Director shall serve for the balance of the applicable term), Directors shall be elected each year, for three (3) year terms, to replace the Director(s) whose term(s) is/are expiring in such year. A Director may not serve more than two (2) consecutive full terms unless unanimously elected by the Associates voting.

C. The current Board of the Association shall constitute a Nominating Committee to nominate competent and responsible individuals to serve as Directors of the Association. At the discretion of the Board of Directors, elections of Directors shall be held either (i) by written ballot distributed to the Owners without a meeting or (ii) by written ballot election at a meeting of the Owners. In all cases, the Board of Directors shall determine the form of the written ballot, but the ballot shall contain one or more blank spaces for additional individuals to be nominated. If election is by written ballot distributed to the Owners without a meeting, the ballot or accompanying materials shall state a date by which the ballot must be returned to the Association in order to be counted. If election of Directors is at a meeting of the Owners, the Association shall cause notice to be given to all Associates that a meeting for election of Directors shall be held at a designated time and place in

Charleston County not earlier than ten (10) days after the date such notice is given. The notice shall contain the names of those individuals recommended by the Nominating Committee, but shall note that Owners may make other nominations at the meeting.

D. At each election of Directors (and at any other vote of Owners), each Owner shall be entitled to cast votes for each vacant position equal to the number of Assessment Shares owned by such Owner (see Section 6.1.3 of the Declaration). (For example, if three Directors are being elected, then an Owner may cast votes for three nominees.)

E. If election of Directors is at a meeting of the Owners, then, after giving the Owners (or written proxy holders) attending such meeting the opportunity to nominate other individuals, with a second by another Owner or proxy holder, the Directors shall be elected by written secret ballot.

4.3. Annual and Regular Meetings. The first meeting of the Board of Directors shall be held within one (1) year from the date of incorporation of the Association. Subsequent annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year, provided that the date for such annual meeting may be deferred by the Board of Directors. Regular meetings of the Board of Directors shall be held on such dates as the Board of Directors may determine.

4.4. Special Meetings. Special meetings of the Board may be called by or at the request of two (2) Directors, or if there are less three (3) Directors, then any Director. The Director(s) calling a special meeting of the Board may fix any place within Charleston County, South Carolina (or such other place as is approved by all Directors) as the place for holding such a meeting. Except as otherwise required or permitted by the South Carolina Nonprofit Corporation Act, notice of any special meetings shall be given at least two (2) days prior thereto. Notice shall be in accordance with the procedure set forth in Section 10.1, provided that notice may also be given by facsimile or internet transmission if the Director given such notice has provided a facsimile number or internet address to the Association and the sender receives electronic or other written confirmation of receipt. Any Director may waive notice of a meeting.

4.5. Quorum, Telephonic Meetings and Manner of Acting. A majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. Upon approval of a majority of the Board, a meeting may be conducted by any electronic means that permits all participating Directors to communicate simultaneously (such as a telephone conference call). A majority of the number of Directors shall constitute a quorum for the transaction of business at any

meeting of the Board. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board and individual Directors shall have no powers unless expressly authorized by the Board.

4.6. Compensation. A Director shall receive no compensation for any services that he may render to the Association as a Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in his or her capacity as a Director.

4.7. Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time for or without cause, by proper action of the Person(s) having the right to designate or elect Directors at the time of removal (see Sections 4.2.1 and 4.2.2, above).

4.8. Vacancies. If a vacancy shall occur in the Board by reason of the death or resignation of a Director, then such vacancy shall be filled by vote of the remaining Directors. If a vacancy shall occur in the Board by reason of removal, then such vacancy shall be filled solely by vote of the Person(s) then having the right to designate or elect Directors (i.e. by the Declarant or the Owners, as set forth in Sections 4.2.1 and 4.2.2, above). Any Director designated or appointed to fill a vacancy shall serve for the unexpired term of his predecessor.

4.9. Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

ARTICLE 5 OFFICERS

5.1. Number. The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board.

5.2. Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board at the regular annual meeting of the Board. In the event of failure to choose officers at such regular annual meeting of the Board, officers may be chosen at any regular or special meeting of the Board. Each officer (whether chosen at a regular annual meeting of the Board or otherwise) shall hold his office until the next

ensuing regular annual meeting of the Board and until his successor shall have been chosen and qualified, or until his death, or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one individual may hold two or more of such offices, except that the President may not also be the Secretary or the Treasurer. No individual holding more than one office shall act in or execute any instrument in the capacity of more than one office. It is not necessary that an officer be a Director or an Owner.

5.3. Subordinate Officers and Agents. The Board may from time to time appoint such other officers or agents as it deems advisable, each of whom shall have such title, hold office for such periods, have such authority, and perform such duties as the Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. It is not necessary that a subordinate officer or agent be a Director or an Owner.

5.4. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President of the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board at any time, for or without cause.

5.5. Vacancies and Newly Created Offices. If any vacancies shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular special meeting.

5.6. The President. The President shall preside at meetings of the Board and at meetings of Owners called by the Association. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board may require; provided that the Board may authorize other officers or Persons to act on specific matters by proper resolution of the Board.

5.7. The Vice President. The Vice President shall preside in the absence of the President and shall do and perform all other acts and things that the Board may require of him.

5.8. The Secretary. The Secretary shall keep, or cause to be kept, the minutes of the Association and shall maintain, or cause to be maintained, such books and records as these Bylaws, the Declaration, or any resolution of the Board may require him to keep. The Secretary shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. The

Secretary shall perform such other duties as the Board may require.

5.9. The Treasurer. The Treasurer shall have general custody and control of the funds of the Association, provided that the Treasurer or the Board may delegate day-to-day custody and control of such funds to qualified Persons, such as a Management Agent. When requested by the President or the Board to do so, the Treasurer shall report the state of the finances of the Association. The Treasurer shall perform such other duties as the Board may require.

5.10. Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided further, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be additionally compensated for services rendered to the Association other than in their capacities as officers.

ARTICLE 6 COMMITTEES

6.1. Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall consist of such number as the Board shall determine. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and (except as otherwise provided by these Bylaws) may be compensated for services rendered to the Association other than in their capacities as committee members. It is not necessary that a committee member be a Director, an officer or an Owner.

6.2. Proceedings of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board. Unless expressly delegated to the committee by the Board, the power and authority of each committee shall only be to make recommendations to the Board, which shall have the final decision whether to take any action or not.

6.3. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a

majority of the authorized membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.4. Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation either to the President, the Board, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.5. Vacancies. If any vacancy shall occur in any committee designated by the Board hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE 7
INDEMNIFICATION

7.1. Indemnification. The Association shall indemnify any Person who was or is a party to, or is threatened to be made a party to, any threatened, pending, or completed action, suit, or proceeding (including a proceeding brought by the Association) whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement in connection with such action, suit, or proceeding, if the indemnified Person (a) acted in good faith, without fraudulent intent or gross negligence (or, if the action is brought by the Association, without negligence or breach of any contractual or fiduciary obligation to the Association), and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, or settlement, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.2. Determination. If a Director, officer, employee, or agent of the Association had been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 7.1, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 7.1 hereof shall be made by the Association only upon a determination that indemnification of the Director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Section 7.1 hereof. Such determination shall be made by the Board by a majority vote of a quorum consisting of Directors excluding the Person whose indemnification is being considered.

7.3. Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board (excluding the Person whose indemnification is being considered) and upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

7.4. Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Declaration, Articles of Incorporation, Bylaws, agreements, vote of disinterested members of Directors, or applicable law. The indemnification authorized by this Article shall apply to all present and future Directors, officers, employees, and agents of the Association and shall continue as to such Persons who cease to be Directors, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and legal representatives of all such Persons.

7.5. Insurance. The Association may purchase and maintain insurance on behalf of any Person who was or is a Director, officer, employee, or agent of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the Bylaws or the laws of the State of South Carolina, as the same may hereafter be amended or modified.

7.6. Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute Common Expenses of the Association and shall be paid with funds of the Association.

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ARTICLE 8
FISCAL YEAR AND SEAL

8.1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

8.2. Seal. The Board may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the word "Seal."

ARTICLE 9
RULES AND REGULATIONS

9.1. Rules and Regulations. In accordance with the Declaration, the Board may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Property, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. Upon request of any Owner, such Owner shall be provided a copy of the rules and regulations or the Declaration, provided that the Board may charge a reasonable fee to cover any reproduction, mailing or administrative costs involved.

ARTICLE 10
NOTICES

10.1. Notices. Notices required hereunder shall be deemed given when in writing and delivered by (a) hand, (b) private or public carrier that provides evidence of delivery, with delivery charges prepaid, (c) facsimile or internet transmission, in which event receipt shall be the date of confirmation of receipt by the addressee, (d) if the address is within the United States, three (3) calendar days after being deposited in the United States Mail, First Class, postage prepaid, or (e) certified mail, return receipt requested, postage prepaid, in which event receipt shall be the date the receipt is signed.

All notices to Owners shall be delivered or sent to such delivery addresses or facsimile or internet addresses as have been provided in writing to the Association, or if no address has been provided, then at the address of any completed Unit that is owned by such Owner, or at the address then shown as that of the Owner of the Unit on the property tax records of Charleston County.

All notices to the Association shall be delivered or sent in care of the Association

MS75PC039

at:

The Gardens of Whitney Lake Association, Inc.
c/o The Lisi Company
80 Alexander Street
Charleston, SC 29403

or to such other address as the Association may from time to time notify the Owners.

ARTICLE 11 AMENDMENT OF BYLAWS

11.1. Amendment by Association. The Bylaws may be amended by approval of the proposed amendment by vote of two thirds (2/3) of the then existing Board of Directors. Notice of the proposed amendment shall be given to the Board in writing by a Director proposing the amendment and the notice shall contain a general description of the proposed amendment and the purpose of the proposed amendment. No amendment to the Bylaws that imposes or reasonably could be construed to impose a greater economic or legal burden on Declarant than exists under the then current provisions of the Bylaws shall be valid unless it is approved, in writing, by Declarant, and no amendment of the Bylaws which is contrary to this statement shall be valid.

11.2. Amendment by Declarant. Declarant may amend the Bylaws without the consent of the Association, the Board, any Owner or any mortgagee if, in Declarant's opinion, such amendment is necessary to (i) bring any provision of the Bylaws or the Declaration into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with the Declaration or the Bylaws; (ii) enable any title insurance company to issue title insurance coverage with respect to any Units subject to the Declaration; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to the Declaration; (iv) enable any governmental agency or mortgage insurance company to insure mortgages on the Units subject to the Declaration; (v) enable any insurer to provide insurance required by the Declaration; or (vi) clarify any provision of the Bylaws or the Declaration or eliminate any conflict between provisions of the Bylaws and/or the Declaration.

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EXHIBIT C: INITIAL RULES AND REGULATIONS

THE GARDENS OF WHITNEY LAKE ASSOCIATION: RULES AND REGULATIONS

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THE GARDENS OF WHITNEY LAKE ASSOCIATION: RULES AND REGULATIONS

In addition to any other covenants, restrictions, and policies established by the Declaration of The Gardens of Whitney Lake Association, Inc. ("Master Declaration"), the following initial rules and regulations ("Rules and Regulations") are imposed on all Units pursuant to Section 5.3 of the Master Declaration. "Declarant" below means Whitney Lake, LLC, its successors and assigns. "Master Association" below means The Gardens of Whitney Lake Association, Inc.

1. Residential Use of Properties.

All Residential Units shall be used solely for residential purposes. No business or business activity may be carried on in any Residential Unit; provided, however, that (a) a private office may be maintained in a Residential Unit as long as the use is incidental to the primary residential use of the Unit, does not violate any applicable law or ordinance, does not involve any exterior signage or advertising of the Unit as a place of business, and does not contribute to parking, traffic or security problems, all in the opinion of the Board of Directors of the Master Association, and (b) the Declarant or any builder of homes in The Gardens of Whitney Lakes may use any Residential Unit it owns for the purpose of carrying on business related to the development, improvement and sale of Residential Units in The Gardens of Whitney Lakes.

2. Development and Landscape Guidelines.

All Development Activity in The Gardens at Whitney Lake must comply with the Development and Landscape Guidelines. In general, "Development Activity" means (a) any clearing, grading or excavation; (b) removal or severe pruning of a tree having a trunk diameter greater than four (4) inches at one (1) foot above surrounding grade; (c) construction or modification of any residence, building, fence or wall, pool, fountain, terrace, patio, deck, road, walkway, antennae, exterior lighting, or other structure on the property, and (d) landscaping of exterior areas. The Development and Landscape Guidelines are enforced by the Development and Landscape Review Board (the "DLRB") established by the Master Declaration. The initial Development and Landscape Standards are in progress and will be incorporated herein when completed and approved by the Board of Directors.

3. Exterior Maintenance.

At The Gardens of Whitney Lake, many parts of the community are designated as an "Area of Common Responsibility" of the Master Association or a sub-Association (such as the Whitney Lake Townhome Association). These Areas of Common Responsibility are maintained by the Master Association or sub-Association, not by a single Unit Owner. The applicable Association is responsible for maintaining these Areas of Common Responsibility in a neat, orderly, safe and aesthetically attractive condition.

Those portions of a Unit that are not designated as an Area of Common

Responsibility must be maintained by the Unit Owner in a neat, orderly, safe and aesthetically attractive condition.

The DLRB must approve any change in color or material of exterior items such as a wall, fence, shutter, chimney, or landscaped feature. Yards must be kept free of tall grass and weeds, undergrowth, dangerous or dead trees and tree limbs, trash and rubbish, and materials that are not properly stored within an approved structure. If a responsible Owner fails to maintain the exterior of the Unit properly, the Master Association has the right to correct the problem and bill the Owner for all costs of such maintenance.

If you are uncertain regarding what you are responsible for maintaining, contact The Lisi Company.

4. Subdivision of Lots.

No Lot may be subdivided or combined with another Lot unless approved by the Board of Directors of the Master Association.

5. Storage and Temporary Structures.

No shed, tent, storage enclosure, storage pods or temporary structure may be placed or maintained on a Lot except as may reasonably be required, in the opinion of the DLRB. The DLRB may impose conditions on the placement or maintenance of any storage or temporary structure it permits. Unless approved in writing by the Board of Directors of the Master Association, no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently.

6. Parking and Driveways.

The number of vehicles parked on a Lot shall not exceed the number of parking spaces on such Lot that are available for parking. All parking shall be within areas specifically designed for parking. No parking shall be permitted on streets or adjacent rights-of-way at other times except in areas specifically designated for such use, and then only in accordance with any signage. No overnight parking shall be permitted on parallel parking lanes on main roads.

No unlicensed or inoperable vehicle; house trailer, boat trailer or other trailer; mobile home; boat; camper; habitable motor vehicle; bus; truck or commercial vehicle over one (1) ton capacity; or vehicle bearing a prominent commercial logo or lettering shall be stored or parked overnight in a permitted parking area (if any are so designated).

7. Garages.

Garage doors shall be closed except when vehicles are entering or exiting the garage, or when a permitted activity within the garage requires that the garage door be

temporarily open for ventilation, light or access. Garages shall be used only for parking permitted vehicles and other activities permitted by these Rules and Regulations and law that do not interfere with the primary purpose of parking vehicles.

8. Changing Elevations.

No elevation change shall be permitted on a Lot that materially adversely affects the surface grade of an adjacent Lot or cause additional storm water to be discharged over such adjacent Lot, unless approved in writing by the DLRB.

9. Delivery Receptacles and Lot Identification Markers.

The DLRB has authority to issue specifications for and/or approve as to location, color, size, design, lettering and all other particulars, receptacles for the receipt of mail, newspapers or similar delivered materials; property identification markers; and name signs.

10. Animals and Pets.

No animals, livestock, reptiles, fowl or poultry shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and are housed within the Residential Unit or any accessory structure that has been expressly approved by the DLRB in writing.

Such permitted household pets shall not constitute a nuisance or cause unsanitary conditions. Frequent prolonged barking, howling, or other noise by a dog or other animal that is clearly audible in another Residential Unit shall be a nuisance. Permitted household pets shall be kept within the Lot of the Owner when unleashed. It shall be considered a nuisance if such pet is allowed to go upon another Owner's Lot, on the streets, or on an Area of Common Responsibility unless under leash or carried by the Owner. No pet shall be permitted to leave its excrement on the Lot of another Owner or (unless expressly approved by the Board of Directors) any Area of Common Responsibility, and any Owner of such pet shall immediately remove the same.

The Board of Directors of the Master Association shall have the right to determine, in its sole discretion, whether a particular pet meets the criteria set forth above, and, if not, it may require the Person responsible for the pet to remove the pet from The Gardens at Whitney Lake.

11. Offensive Activities.

No noxious, offensive or illegal activities shall be carried on upon any Unit, nor shall anything be done thereon that is or reasonably may become an annoyance or nuisance to the Owners of other Units in The Gardens of Whitney Lake community. Without limiting the generality of this provision, no exterior speakers, horns, whistles, bells or other sound devices that emit sounds that are clearly audible on another Lot shall be

located within The Gardens at Whitney Lake, except security, theft and fire alarm devices or other devices expressly approved in writing by the Board of Directors of the Master Association.

12. Signs.

No exterior signs are permitted in The Gardens of Whitney Lake except signs approved by the DLRB that are consistent with the Development and Landscape Guidelines. Interior signs that are visible from the exterior of a Residential Unit, flashing and movable signs, and signs advertising "for sale" or "for rent", or similar wording are prohibited (except for signs approved by the DLRB for use during the initial development and sale of a Unit). Except for signs required to comply with any law regarding zoning hearings, judicial sales or similar mandatory procedures, all signs must be professionally designed and constructed.

13. Screening and Clotheslines.

Unless otherwise expressly approved in writing by the DLRB, play equipment (such as basketball goals, swings, storage containers, pet houses or paraphernalia), trash containers, pool equipment, solar heating panels, heating and air conditioning systems, and similar equipment shall be screened to conceal them from view of the naked eye of a person standing at existing grade on any adjacent Area of Common Responsibility, Lot, Unit or right-of-way. Unless approved by the DLRB, fuel tanks and utility service lines connecting to the Residential Unit or other structures on the Lot shall be underground. Exterior clotheslines are prohibited.

14. Antennas and Satellite Dishes.

Unless otherwise expressly approved in writing by the DLRB, no telecommunications, radio or television transmission or reception tower or satellite dish or antennas shall be erected on any Unit unless it is (a) not more than two feet in height or diameter, (b) screened from view of the naked eye of a person standing at existing grade on any adjacent Area of Common Responsibility, Lot, Unit or right-of-way, and (c) in a location approved in writing by the DLRB.

15. Storing or Leaving Items Outside the Lot

No item, including, without limitation, garbage cans, yard waste, play equipment, grills, or similar items shall be stored by an Owner outside the Lot of such Owner except as expressly approved by the DLRB. Play equipment (such as basketball goals, bicycles and tricycles, swings, storage containers, pet houses or paraphernalia) shall not be left or kept on walks, driveways or road rights of way.

16. Garbage and Refuse Disposal.

Trash, garbage or other waste shall be kept in closed, sanitary containers and, except during pickup periods, shall be kept inside the Residential Unit or within an enclosed or fenced service or storage area approved by the DLRB. All equipment for the

storage or disposal of such material shall be kept in a clean and sanitary condition. All service and storage areas shall be enclosed or fenced in such a manner that the materials within shall be screened from view of the naked eye of a person standing at existing grade on any adjacent Area of Common Responsibility, Lot, Unit or right-of-way.

Garbage cans, trash containers, boxes, bags, and other trash or debris shall not be placed on the street right of way or adjacent walks or driveway until after 6:00 P.M. on the day before the day of pickup. Only those items that will be picked up by the trash removal service shall be placed in such areas. All empty containers shall be removed by 7:00 P.M. on the day of pick-up.

17. Use of Whitney Lake.

Use of Whitney Lake and other amenities of The Gardens at Whitney Lake shall be subject to rules posted at the site or distributed by the Master Association from time-to-time.

18. Waivers of Rules and Regulations.

The Board of Directors or the DLRB may, for good cause, as determined in its sole discretion, waive violations of these Rules and Regulations that are not violations of the Master Declaration. Such waiver shall be in writing.

19. Enforcement of Rules and Regulations.

Failure to comply with the Rules and Regulations shall be grounds for denying access to any Area of Common Responsibility, imposing fines, for instituting legal action to recover sums due against the applicable Owner for damages and/or for injunctive relief, or such other actions as are permitted by applicable law. If the Declarant or the Master Association employs legal counsel to enforce a Rule or Regulation, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating party.

20. Other Rules and Regulations.

The Board of Directors may modify these Rules and Regulations or issue other Rules and Regulations.

21. Contacting the Master Association, Declarant or DLRB.

Until otherwise notified, the Master Association, the Declarant (Whitney Lake, LLC) and the DLRB ("Development and Landscape Review Board") may be contacted at:

The Lisi Company
80 Alexander Street
Charleston, SC 29403
Telephone: (843) 722-2294
Facsimile: (843) 722-9536

EXHIBIT D: ARBITRATION PROCEDURE

1. Arbitration Generally. Any matter subject to arbitration under this Declaration (a "Dispute") shall be submitted to binding arbitration in accordance with §15-48-10 et seq. of the Code of Laws of South Carolina, 1976, as amended (the "Arbitration Act"), unless such matter is expressly excluded by the Arbitration Act or other applicable law. The filing of a judicial action to enable the recording of a notice of pending action, or order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver or breach of the right or duty to arbitrate under this provision.

2. Location, Rules and Notice. Unless otherwise agreed in writing by the parties, or as set forth below, arbitration shall occur in Charleston County, South Carolina, and in substantial accordance with the arbitration rules of the Circuit Court Alternative Dispute Resolution Rules established by the South Carolina Supreme Court from time-to-time. A party desiring arbitration shall give written notice of its demand for arbitration to the other party. The notice shall state in reasonable detail the nature of the Dispute and the provisions of the Agreement that are thought to be applicable to the Dispute (but such designation shall not limit the authority of the arbitrators to consider other provisions of the Agreement or law).

3. Arbitrators Other Than Third Arbitrator. The parties shall endeavor in good faith to agree upon one (1) mutually acceptable arbitrator. If the parties have not agreed upon a mutually acceptable arbitrator within fourteen (14) days of receipt of written notice of a demand for arbitration by a party, then arbitration shall be a panel of three arbitrators. Then, within twenty-eight (28) days of receipt of written notice of a demand for arbitration by a party, each party shall select one arbitrator and notify the other party of the name, address, and telephone number of the arbitrator selected. If a party fails to designate an arbitrator in a timely manner, then the arbitrator for that party shall be appointed in the same manner (as provided below) as for the appointment of a Third Arbitrator in a case in which the two arbitrators have been appointed but the two arbitrators are unable to agree on the Third Arbitrator. Unless agreed in writing by the parties, all arbitrators shall be licensed South Carolina attorneys who are certified as qualified arbitrators. No arbitrator shall be a person who would not reasonably be viewed as an impartial third party. Any objection to a person selected as an arbitrator shall be made in writing within seven (7) days of the date of notification to the objecting party.

4. Third Arbitrator. Within fourteen (14) days of and notification of selection of both arbitrators, the two (2) arbitrators selected shall select the Third Arbitrator. If the two selected arbitrators cannot agree on the Third Arbitrator, then either party, on behalf of both parties, may request, in writing, such appointment by the president of the Charleston County Bar Association. In his absence or failure, refusal or inability to act within fourteen (14) days after being so requested, then either party, on behalf of both,

may apply to the Court of Common Pleas, Charleston County, South Carolina, for the appointment of such Third Arbitrator. Upon the failure, refusal or inability of any arbitrator to act, his successor shall be appointed within fourteen (14) days by the party who originally appointed him, or if that party shall fail so to appoint such successor in a timely manner, then the other party shall have the right to appoint the successor. If the Third Arbitrator fails, refuses or is unable to act, his successor shall be appointed by following the procedure for selection of the Third Arbitrator set forth above.

4. Decision. The arbitrator(s) may award all remedies available at law or in equity (including specific performance). The decision of the arbitrator(s) shall be given in writing. A decision in which any two (2) arbitrators concur shall be binding, or if no two (2) arbitrators concur, then the decision of the Third Arbitrator shall be binding.

5. Fees of Arbitrators. If a single arbitrator is selected, the non-prevailing party, as determined by the arbitrator, shall be responsible for the fees and expenses of the arbitrator. If a panel of three arbitrators is selected, each party shall be responsible for the fees and expenses of the arbitrator chosen by that party, and the non-prevailing party, as determined by the arbitration, shall be responsible for the fees and expenses of the Third Arbitrator. If settlement occurs before a decision of a single arbitrator is rendered, the parties shall share equally any fees and expenses of the arbitrator incurred through settlement. If a Third Arbitrator has been appointed, and settlement occurs before a decision of the three arbitrators is rendered, the parties shall share equally any fees and expenses of the Third Arbitrator incurred through settlement.

6. Appeal or Enforcement of Arbitration Decision. Judgment upon the decision of the arbitrator(s) may be entered in any court having authority to enforce the arbitration decision. If it is necessary to seek legal action to enforce a decision of the arbitrator(s), or a decision of the arbitrator(s) is appealed to a court of law, the party prevailing in such enforcement procedure or such appeal shall be entitled to recover any reasonable legal fees and expenses incurred in such enforcement procedure or appeal.

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RECORDER'S PAGE

NOTE: This page **MUST** remain with the original document



Filed By:

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THE LISI COMPANY
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