

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  
WHITNEY LAKE TOWNHOME ASSOCIATION

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

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHITNEY LAKE TOWNHOME 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, as defined below, 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. **This Declaration is subordinate to the Declaration of Covenants, Conditions and Restrictions for The Gardens of Whitney Lake Association recorded prior to this Declaration, and all amendments and supplements thereto.**

**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. "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 any portions of the Property expressly so designated by the Declarant or Association, including, without limitation, the Exterior Components, as defined in Section 6.2, below.. The Area of Common Responsibility shall include any Property or area designated as an Area of Common Responsibility, 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 a portion of the Property, which plat is approved by Declarant or the Association.

1.1.4. "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 both Regular and Special Assessments.

1.1.4. "Association" means Whitney Lake Townhome Association, Inc., a South Carolina not-for-profit corporation.

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

1.1.7. "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.

1.1.8. "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. It excludes Common Areas of the Master Association. 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.

1.1.9. "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.

1.1.10. "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.

1.1.11. "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.

1.1.12. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Whitney Lake Townhome 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.

1.1.13. "Development Activity" is defined in Section 3.1 of the Master Declaration.

1.1.14. "Development and Landscape Review Board" or "DLRB" means the individuals designated by the Master Association to review and approve Development Activity.

1.1.15. "Exterior Components" is defined in Section 6.2, below.

1.1.16. "Garage" is defined in Section 6.4.1, below.

1.1.17. "Limited Common Area" means Common Area that is reserved for the use of one or more specified Owners, and which is designated as a Limited 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. Garages are Common Areas which are reserved, by license, for the use of a particular Owner. (See Section 6.4 below.)

1.1.18. "Lot" means any Property that is platted of record and intended for development of one single-family (1) residential dwelling, whether attached or detached.

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

1.1.21. "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for The Gardens of Whitney Lake Association recorded prior to this Declaration, and all amendments and supplements thereto.

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

1.1.23. "Owner" means any Person that owns fee simple title to any Unit. "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.

1.1.24. "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 residential structure on a Lot 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" excludes Common Areas and Property dedicated to the public 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. "Unit" means a Residential Unit (see above).

1.1.26. "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 secondary roads within the Property as Declarant 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 Property, (c) secondary water, sanitary sewer, cable television and electrical and gas lines and facilities within the Property 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 Property as the Declarant 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. 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.

#### **2.1.2. Conveyance of Common Area**

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 expressly approved by the Master Association and 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. Subjecting Added Property to the Declaration**

Any 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**

The Master Declaration requires that all Development Activity shall be approved by the Development and Landscape Review Board prior to commencement of Development Activity. "Development Activity" is initially defined in Section 3.1 of the Master Deed as meaning (a) any clearing, grading or excavation; (b) removal or severe pruning of a tree having a trunk diameter greater than eight (8) inches at five (5) feet 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. For further information regarding review of Development Activity, see the Master Deed.

### **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. The exercise of such right and easement by Persons other than Declarant or the Master Association shall be undertaken only with the prior written approval of the Declarant.

#### 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 the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner 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 entity or public authority, agency, public service district, public or utility or other Person, upon, over, under and across the Common Area or any Area of Common Responsibility (including, but not limited to the "Exterior Components" as defined in Section 6.2, below). The easement(s) granted may be for constructing, installing, maintaining, repairing, inspecting and replacing master television antennae, television cable and data transmission systems; security and similar systems; exterior landscaping; and all utility facilities and services, including, but not limited to, storm water and sanitary sewer systems and electrical, gas, telephone, water and other systems. 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

As set forth in the Master Declaration, except as expressly determined by written resolution of the Board of Directors of the Master Association, 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 of the Master Association 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.

## **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 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. 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. Such rules and regulations must be approved by the Board of Directors of the Master Association and shall not be contrary to the Master Declaration or Rules and Regulations

issued by the Master Association pursuant to the Master Declaration.

**5.4. INDEMNIFICATION OF THE 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 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 related to the Area of Common Responsibility or the interpretation and application of this Declaration, the Bylaws, 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 the Master Declaration, 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. Obtaining Insurance Coverage**

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 such 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. Property Insurance for Townhomes**

5.8.2.1. Because proper coverage for all townhomes is essential to ensure a consistent standard for Exterior Components (see Article 6) and problems could occur for other Owners and the Association if an Owner failed to properly insure the Owner's Unit, the Association shall be responsible for obtaining property insurance for the Units, as set forth in Section 5.8.1(A) and (B), above. Allocable premiums shall be collected as a Special Assessment against the applicable Unit. Any deductible shall be a Common Expense of the Association. The premiums for such coverage shall be allocated among

Units in the same manner as the insurer determines to be allocable to each Unit.

5.8.2.2. If, however, the insurer does not allocate premiums by Unit, the premiums shall be allocated among Units based on the number of Assessment Shares allocable to that Unit as compared to the Total Assessment Shares allocable to all insured Units, as set forth in Section 7.1.3.1, below.

Example: Assume that (a) the Unit pays Regular Assessments allocable to one (1) Assessment Share, (b) there are 125 Total Assessment Shares, and (c) the total annual insurance premiums are \$150,000. Then, the Unit shall pay \$150,000 divided by 125, or \$1,200. (NOTE: This is a mathematical example only. It is not an estimate of the actual premiums that may be charged from time to time or the allocation of such premiums.

#### **5.8.3. Insurance by the Unit Owner**

Because the nature and value of personal property inside a Unit will vary, each Owner, at such Owner's expense, shall obtain such insurance as the Owner determines is desirable for (a) furnishings and other personal property in the Unit, and (b) if not covered by the insurance obtained by the Association pursuant to 5.8.2, above, liability insurance covering insurable events occurring inside the Unit of such Owner.

#### **5.8.4. Other Insurance Criteria**

All insurance premiums shall be a Common Expense, with the premiums being allocated as set forth in Section 5.8.2. 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.

#### **5.8.5. 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.

#### **5.8.6. 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.

#### **5.8.7. 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. MAINTAINING EXTERIOR COMPONENTS OF UNIT**

#### **6.1. OWNER RESPONSIBLE EXCEPT FOR EXTERIOR COMPONENTS**

Except for those Exterior Components of a Unit which are Areas of Common Responsibility, as set forth in Section 6.2, below, a Unit Owner shall be responsible for maintaining, repairing and replacing all elements of a Unit owned by such Owner. Units shall be maintained by Unit Owners in a good, safe state consistent with applicable

laws, the Master Declaration, this Declaration, Development and Landscape Guidelines, and all rules and regulations issued pursuant to the Master Declaration or this Declaration.

**6.2 EXTERIOR COMPONENTS OF UNITS AS AREA OF COMMON RESPONSIBILITY.**

**6.2.1. Association Responsible for Exterior Components**

Because of the mutual benefits to Unit Owners of maintaining consistency in the appearance, maintenance and repair of certain visible portions of Units and portions of Units which affect other Units, the exterior components listed in 6.2.2, below (the "Exterior Components"), shall be Areas of Common Responsibility which shall be maintained, repaired and replaced by the Association, but which shall be reserved solely for the use of the Unit of which such Exterior Components are a part, or, if serving more than one (1) Unit, for the use of the Units served. The expenses and costs of maintaining, repairing and replacing the Exterior Components, including any reserves established by the Association for such purposes, shall be Common Expenses of the Association allocated among all Unit Owners as set forth in Sections 7.1 and 7.2, below. The Board of Directors shall have authority to determine when the expenses and costs of maintaining, repairing and replacing the Exterior Components shall be incurred.

**6.2.2. Exterior Components Defined**

The Exterior Components shall be:

(a) the exterior landscaping and irrigation; master television antennae, television cable and data transmission systems; security and similar systems; driveways; walks; and all exterior utility facilities and services, including, but not limited to, storm water and sanitary sewer systems and electrical, gas, telephone, water and other utility systems on a Lot which are outside the residential structure on such Lot;

(b) the roof (including any underlayment, flashing and similar waterproofing elements) and the exterior of the Unit (including, without limitation, the gutters, exterior materials, trim, soffits, exposed portions of chimneys, exterior steps, entries, balconies and decks, and similar exterior components, but excluding windows, window frames and doors);

(c) Such other portions of the Unit as the Board of Directors shall determine from time-to-time.



### 6.3 OWNER LIABILITY FOR COSTS RESULTING FROM CERTAIN ACTIONS

Notwithstanding Section 6.2, to the extent such costs are not funded by insurance proceeds, the Association shall have the right to impose a Special Assessment on any Unit for costs incurred by the Association in maintaining, repairing or replacing any Exterior Component that, in the opinion of the Board of Directors, is required as the result of the intentional act or omission or gross negligence of the Owner of such Unit of any Occupant of the Unit. Such uninsured costs may include, without limitation, any deductible not covered by insurance and costs of determining or coordinating the required maintenance, repair or replacement.

### 6.4 USE AND MAINTENANCE OF GARAGES

#### **6.4.1. Garages Generally**

A "Garage" is a portion of a structure located on Common Area that is designed to accommodate the storage of vehicles by the Owner of a Residential Unit or a Person renting such Residential Unit. The Garage Location Plan attached hereto as Exhibit C shows the location of the twelve (12) garage buildings containing thirty-nine (39) Garages that are part of the Property (prior to adding any Added Property). A Garage may not be used by any Person other than an Occupant of a Residential Unit. A Garage is a Limited Common Area reserved for the use of a particular Owner. An Owner does not own a Garage for which such Owner has been issued a license by the Association (a "Garage License"), but the Owner retains the right to use such Garage as long as such Owner complies with the provisions of this Declaration and the terms of the Garage License.

#### **6.4.2. Garage Licenses**

A Garage License for use of a specific Garage shall initially be issued by the Association to an Owner at or after the closing of the purchase of a Residential Unit by such Owner, if such Owner has entered into a contract with the Declarant (or its authorized designee) to purchase such Garage License. As a condition of the issuance of such Garage License, the licensee of the Garage (the "Garage Licensee") shall pay to Declarant or its designee such amount as shall be agreed upon in writing by Declarant or its designee and the Garage Licensee.

#### **6.4.3. Transfer of Garage Licenses to Unit Owner or Renter**

Without approval by the Association, a Garage Licensee shall be authorized to transfer the Garage License to any Owner of a Residential Unit, including a Person to which a Residential Unit is conveyed by the Garage Licensee, for such compensation as shall be agreed upon the Garage Licensee and the transferee. Without approval by the Association, a Garage Licensee shall also be authorized to assign the Garage License to a Person renting a Residential Unit from the Garage Licensee, for use only during the term of such rental and for such compensation as shall be agreed upon the Garage

Licensee and the renter. The Association may require that assignment or transfer of a Garage License be evidenced by a specific form or forms. During the term of any temporary assignment, the Garage Licensee shall continue to be responsible for all obligations as a Garage Licensee, but the assignee shall also be responsible for complying with all rules and regulations established by the Association for use of the Garage. Immediately upon transfer or temporary assignment of a Garage License, the Garage Licensee shall notify the Association of the transfer or assignment to and execute such documents as the Association shall require from time to time to in order to identify the Person then owning or having temporary use of the Garage License and provide information regarding such Person. The Association may charge a reasonable fee for the administrative costs of monitoring and processing such transfers or temporary assignments.

**6.4.4. Transfer of Garage License Upon Sale of Unit**

Unless a Garage License has previously been transferred to another Owner in accordance with this Section 6.4, if a Garage Licensee owns one (1) Unit, the Garage License shall automatically be transferred to a new Owner of such Unit upon conveyance of the Unit. If a Garage Licensee owns more than one (1) Unit, the Garage Licensee must formally transfer the Garage License to a new Owner of such Unit or the Garage License shall continue to be owned by the original Owner (until such time as the original Owner conveys the last Unit owned by such Owner).

**6.4.5. List of Persons Desiring to Acquire Garage License**

The Association shall maintain a list of Owners or renters who have notified the Association that they wish to purchase or rent a Garage and, upon request of any Garage Licensee, shall provide a list of such Owners and renters to the Garage Licensee.

**6.4.6. Invalid Efforts to Transfer or Assign a License**

Unless expressly approved in writing by the Board of Directors of the Association, any purported transfer or assignment of a Garage License that does not comply with the provisions of this Section 6.4 shall be invalid. The Board of Directors shall have the authority to suspend or terminate a Garage License, without compensation to the Garage Licensee, if it determines that the applicable provisions of this Declaration or the Garage License have not been observed by the Garage Licensee.

**6.4.7. Garage Budget**

The cost of maintaining the exterior and structure of the Garages, and such other elements of the Garages, if any, as the Association may determine from time-to-time, including establishing any reserves for such purposes, and the cost of insuring the Garages, shall be an Association expense that is set forth in a "Garage Budget" that is separate from the Association expenses set forth in the Association operating Budget referenced in Sections 7.1.1 and 7.1.2. The Garage Budget shall, however, be

determined in a manner similar to that for the Association operating Budget, as set forth in Sections 7.1.1 and 7.1.2, below.

#### **6.4.8. Assessments for Garage**

Each Garage Licensee shall pay a "Garage Assessment" to the Association, as a Special Assessment (see Section 7.2, below), based on the revenues determined by the Board of Directors to be required from all Garage Assessments under the Garage Budget. Each Garage Assessment shall be a prorata share of the total revenues required from all Garage Assessments.

Example: Assume that (i) the revenue required from assessments under the Garage Budget for the forthcoming fiscal year is \$3,900; and (ii) at the time, there are 39 Garages. Then, the Garage Assessment for each Garage Licensee shall be \$100 (\$3,900 divided by 39 Garages).

NOTE: The Garage Assessment calculations shown provide a mathematical example only. They are not intended to be estimates of revenues required, the number of Garages, the allocation of Garage Assessments, or the actual Garage Assessment which may be applicable from time to time.

## **ARTICLE 7. ASSESSMENTS AND CHARGES**

### **7.1. REGULAR ASSESSMENTS AND BUDGET**

Regular Assessments shall be computed and assessed against all Units as follows:

#### **7.1.1. 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.

**7.1.2. 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.

**7.1.3. Regular Assessments**

**7.1.3.1. Assessment by Unit Type.** The Owner of each Residential Unit shall pay the following Regular Assessment Share:

<u>Type of Unit</u>	<u>Assessment Share/Unit (*)</u>
Daisy (3 bedroom)	0.96
Daisy (2 bedroom)	0.84
Primrose (3 bedroom)	1.09
Aster (3 bedroom)	1.09
Primrose (2 bedroom)	0.95
Aster (2 bedroom)	0.95

(\*An "Assessment Share" is defined in Section 7.1.4., below.)

**7.1.3.2: Other Types of Units.** If other types of Units subsequently become

subject to this Declaration, Declarant shall have the right to define the Assessment Share allocable to such Units.

**7.1.3.3: When Regular Assessment Becomes Payable.** No Regular Assessment shall be payable solely for an undeveloped Lot. For Assessment purposes, a Residential Unit other than a Condominium 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. A Condominium Unit shall be deemed to exist at such time as (i) a certificate of occupancy (or comparable evidence of completion) is issued by the applicable regulatory body and (ii) a master deed is recorded by the condominium regime in the Office of the Register of Mesne Conveyances for Charleston County; provided, however, if the condominium regime fails to record the master deed, the Association may determine that the Condominium Unit is nevertheless subject to the Assessments. 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.

**7.1.4. Calculating the Regular Assessments**

To determine the Total 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 Daisy (3 bedroom) Residential Units existing at the beginning of the applicable fiscal year. Multiply the number of such Residential Units by one (0.96).
- B. Determine the total number of Daisy (2 bedroom) Residential Units existing at the beginning of the applicable fiscal year. Multiply the number of such Residential Units by 0.84.
- C. Determine the total number of Primrose (3 bedroom) and Aster (3 bedroom) Residential Units existing at the beginning of the applicable fiscal year. Multiply the number of such Residential Units by 1.09.
- D. Determine the total number of Primrose (2 bedroom) and Aster (2 bedroom) Residential Units existing at the beginning of the applicable fiscal year. Multiply the number of such Residential Units by 0.95.
- E. Determine the sum of the Assessment Shares in A through D. This constitutes the "Total Assessment Shares". (Note: if other types of Units subsequently become subject to this Declaration, the procedure set forth above shall be

adjusted accordingly).

F. Divide the Budget revenues from Regular Assessments required for the fiscal year by the Total Assessment Shares to determine the amount of one (1) Assessment Share.

Example: Assume that (i) the required Budget revenue from Regular Assessments for the forthcoming fiscal year is \$50,000; and (ii) the number of Residential Units of each type are, at the time, as set forth below:

<u>Type of Unit</u>	<u>Assessment Share/Unit</u>	<u># of Units</u>	<u>Total Shares</u>
Daisy (3 bedroom)	0.96	37	35.52
Daisy (2 bedroom)	0.84	9	7.56
Primrose (3 bedroom)	1.09	18	19.62
Aster (3 bedroom)	1.09	18	19.62
Primrose (2 bedroom)	0.95	2	1.90
Aster (2 bedroom)	0.95	4	3.80
	<u>Subtotal:</u>	120	88.02

Then, Total Assessment Shares are 88.02. Thus, as an example, one (1.0) Assessment Share for the year is \$50,000 divided by the number of Total Assessment Shares (88.02), or \$568.05. The Regular Annual Assessment for a Daisy (3 bedroom) with an Assessment Share/Unit of 0.96 would be \$545.33 (\$568.05 x 0.96).

NOTES: (1) The Assessment calculations shown provide a mathematical example only. They are not intended to be estimates of Revenues required, the number of Residential Units of different types, or the actual Assessment which may be applicable from time to time. (2) The number of Residential Units may change.

#### **7.1.5. 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 7.1.3.

#### **7.1.6. 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.

#### **7.1.7. Notice and Payment of Regular Assessments**

**7.1.7.1. Notice.** Unless the Board of Directors elects a shorter payment period, the Regular Assessments shall be due on a calendar year 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.

#### **7.1.7.2. Payment of Regular Assessments.**

(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 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.

## **7.2. SPECIAL ASSESSMENTS**

### **7.2.1. 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 which cumulatively do not exceed Two Hundred Dollars (\$200.00) per Assessment Share during any fiscal year. In addition, the Board of Directors may levy one or more Special Assessments to cover the cost of any unbudgeted property taxes or assessments or, in the event of an insured loss or event, any deductible amount under the insuring policy. (Special Assessments shall be in the same proportion as the portion of the Assessment Share which is allocable to such Units, as set forth in Section 7.1.3)

### **7.2.2. Special Assessments for Specific Owners**

In addition to the Special Assessments referenced in Section 7.2.1, and the Garage Assessments authorized in Section 6.4, 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 and all rules and regulations issued pursuant to the Master Declaration or this Declaration.

### **7.2.3. Special Assessments by Owners**

Any other Special Assessment in excess of those permitted by Sections 7.2.1 and 7.2.2 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 7.1.4. 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.

### **7.2.4. 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 8.11 of this Declaration.



### 7.3. ASSOCIATION WORKING CAPITAL ASSESSMENTS

#### **7.3.1. General Description and Purpose**

In order to ensure that adequate working capital is available to the Association, 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.

#### **7.3.2. 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 two (2) months. (See Section 7.1.3.)

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).

#### **7.3.3. Time of Payment**

The Working Capital Assessment shall be paid to the Association (i) by the purchaser at closing of the initial purchase of the Unit, or (ii) for a Unit that is not built for sale upon completion, but is built for occupancy by the Owner, by the Owner within fourteen (14) days after issuance of a certificate of occupancy for the Unit. 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.

#### **7.3.4. 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.

### 7.4. 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 unpaid annual Assessments, 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.

#### 7.5. 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 percent (1%) 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.

#### 7.6. 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 9.3.

#### 7.7. 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.

**7.8. 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 8. 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. 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 7.2.

**ARTICLE 9. GENERAL PROVISIONS**

**9.1. AMENDMENTS BY ASSOCIATION**

Amendments to this Declaration, other than those authorized by Section 9.2 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.

No amendment that imposes or reasonably could be construed to impose a greater economic or legal burden on the City of Charleston for maintenance of storm drainage systems shall be valid unless it is approved, in writing, by the City of Charleston, and no amendment of the Declaration which is contrary to this statement shall be valid.

#### 9.2. AMENDMENTS BY DECLARANT

Notwithstanding any other provision herein or in the Bylaws, Declarant may amend this Declaration without the consent of the Association, any 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. No amendment that imposes or reasonably could be construed to impose a greater economic or legal burden on the City of Charleston for maintenance of storm drainage systems shall be valid unless it is approved, in writing, by the City of Charleston, and no amendment of the Declaration which is contrary to this statement shall be valid.

#### 9.3. ENFORCEMENT

Each Owner shall comply strictly with this Declaration, the Bylaws and the published Rules and Regulations of the Association adopted pursuant to this Declaration, as they may be lawfully amended from time to time. Failure to comply shall be grounds for imposing fines, for instituting an action to recover sums due 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 to subsequent thereto. No right of action shall

accrue in favor of nor shall any action be brought or maintained by any Person against Declarant or the Association for or on account of any failure to bring an action on account of any purported or threatened violation or breach by any Person of the provisions of this Declaration, the Bylaws, or any rules and regulations of the Association.

#### 9.4. 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, 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 7.1.4., 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.

#### 9.5. 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.

#### 9.6. INTERPRETATION

This Declaration shall be construed in accordance with the laws of the State of South Carolina 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 captions herein as to the contents of various portions of the Declaration are inserted only for convenience and do not define, limit, extend or otherwise modify 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.

9.7. 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.

9.8. 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.

9.9. RIGHTS OF THIRD PARTIES

This Declaration shall be recorded for the benefit of Declarant, Owners, the Association, and 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.

9.10. NOTICE OF CONVEYANCE, LEASE OR RENTAL

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

9.11. 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:

Whitney Lake Townhome 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.

9.12. MANDATORY ARBITRATION

Any dispute between (a) the Association or any Owner and (b) 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.

9.13. 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.

**THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK.**

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 McQuinn  
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, including, without limitation the lots shown on the Plat designated TMS #-312-00-00-001 through 088.

*dlc*  
LESS AND EXCEPT (a) those areas shown on the Plat as existing or future street rights of way, and (b) those areas designated on the Plat as "Neighborhood Greens", which are Common Areas of the Whitney Lake Master Association, Inc.

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

**EXHIBIT B: BYLAWS**

**WHITNEY LAKE TOWNHOME ASSOCIATION, INC.**

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**BYLAWS OF  
WHITNEY LAKE TOWNHOME 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 Whitney Lake Townhome 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 "Whitney Lake Townhome 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 Whitney Lake Townhome 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 7.1.4 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, who need not be Owners of Units. 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 Directors, or if there are less than three 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.

## 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 at:

Whitney Lake Townhome 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.



**EXHIBIT C: 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.



BK W575PG901



**FILED**

March 9, 2006  
4:43:39 PM

BK W575PG850

Charlie Lybrand, Register  
Charleston County, SC

### RECORDER'S PAGE

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

Filed By:

JOHN LISI  
THE LISI COMPANY  
80 ALEXANDER ST  
CHARLESTON SC 29403

*CFM, I  
W*

DESCRIPTION	AMOUNT
DEC/COV	\$ 67.00
Postage	3.00

<b>TOTAL</b>	<b>\$ 70.00</b>
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