



NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that PENNY CREEK, ASSOCIATES L.L.C., hereby declares that the Property described in Exhibit "A," is and shall be held, transferred, sold, conveyed, given, mortgaged, donated, leased, occupied, and used subject, among others, to the covenants and conditions (hereinafter referred to as the "Covenants") hereinafter set forth.

## ARTICLE I

### DEFINITIONS

The following words and terms, when used in this Declaration or any supplemental declaration, (unless the context shall clearly indicate otherwise), shall have meanings set forth below. Other definitions may appear throughout this instrument and the By-Laws attached hereto, and shall have the meanings more particularly set forth therein.

(a) "*Assessment*" shall mean and refer to any Lot or Parcel Owner's share of the Common Expenses or any other charges from time to time assessed against an Owner by the Association in the manner herein provided. "*Assessment*" shall also mean and refer to Declarant's share of the Common Expenses or other charges from time to time assessed against Lots or Parcels owned by Declarant. The term "*Assessments*" may also sometimes mean and refer to, collectively, the "*Annual Assessment*" or "*Special Assessments*" as the context herein shall so indicate.

(b) "*Association*" shall mean and refer to the Fenwick Hall Plantation Property Owners' Association, Inc., a non-profit corporation organized under the laws of the State of South Carolina, its successors and assigns.

(c) "*Board of Directors*" and/or "*Board*" shall mean and refer to the Board of Directors of Fenwick Hall Plantation Property Owners Association, Inc., as more fully set forth in Article IV herein.

(d) "*By-Laws*" shall mean and refer to the By-Laws of the Association which govern the administration and operation of the Association, as may be amended from time to time, which said By-Laws are attached hereto and incorporated herein by reference.

(e) "*Cause*" for removal of an Officer or Director of the Association shall mean and refer to either (i) fraudulent or dishonest acts or (ii) gross abuse of authority in the discharge of duties for or on behalf of the Association by an Officer or Director, and which cause must be established by the Board after written notice to such Officer or Director of specific charges, and opportunity of such Officer or Director to meet with the Board and refute such charges.

(f) "*Common Expense(s)*" shall mean and refer to all expenditures lawfully made or

incurred by or on behalf of the Association in connection with the administration of Fenwick Hall Plantation, in the implementation and enforcement of the terms, provisions, and intent of this Declaration and the By-Laws.

(g) "*Declaration*" shall mean and refer to this Declaration and any supplements and amendments thereto recorded hereinafter in the R.M.C. Office.

(h) "*Declarant*" shall mean and refer to Penny Creek Associates, L.L.C., (a South Carolina limited liability company), its successors and assigns.

(i) "*Director*" shall mean and refer to members, or any one member, of the Board of Directors of the Association.

(j) "*Fenwick Hall Plantation Architectural Review Board*" or "*FHPARB*" shall mean and refer to the architectural authority established under these Covenants.

(k) "*Fenwick Hall Plantation Common Properties*" or "*Common Properties*" shall mean and refer to those parcels of land within the Property, together with any improvements thereon, which are deeded or leased to the Association and designated in such deed or lease as "Fenwick Hall Plantation Common Properties" or any property over which the Association owns or holds an easement. The term "Fenwick Hall Plantation Common Properties" shall also include any personal property acquired by the Association if said property is designated by the Association as a "Fenwick Hall Plantation Common Property." Any property that is leased to the Association and designated in such lease as a "Fenwick Hall Plantation Common Property" shall be a Fenwick Hall Plantation Common Property but shall lose its designation and character as a Fenwick Hall Plantation Common Property upon the expiration of such lease, if not renewed or extended. An initial designation of such Common Properties is attached hereto as Exhibit B.

(l) "*Fenwick Hall Plantation*" or "*Subdivision*" shall mean and refer to the exclusive development, together with certain private community facilities and areas more fully described herein, to be constructed on the Property.

(m) "*Lot*" shall mean and refer to any lot, whether improved or unimproved, which may be independently owned and conveyed, and which is shown on a recorded plat of the Property and designated for use as a building area site for the construction of a single family dwelling; such term shall also include, without limitation, any contiguous or non-contiguous portion of a Lot ancillary to the use allowable on the remainder of the Lot, together with any and all improvements located therein or thereon.

(n) "*Member*" shall mean and refer to all Members of the Association as provided herein.

(o) "*Membership*" shall mean and refer to membership by an Owner and/or Declarant in

the Fenwick Hall Plantation Property Owners' Association, Inc.

(p) "*Owner*" shall mean and refer to the record owner (whether one or more persons, firms, associations, corporations, partnerships, trusts, trustees, or other legal entities) of the fee simple title to any Lot or Parcel; notwithstanding any applicable theory of a mortgage, such terms shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding or instrument in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. When reference is made herein to Owner(s)' voting rights, all Owners of one Lot or Parcel, when more than one Owner holds record title, shall have, collectively, such voting rights in the association as may be attached to the Lot or Parcel.

(q) "*Parcel*" shall mean and refer to any property, whether improved or unimproved, which may be independently owned and conveyed, and which is shown on a recorded plat of the Property and designated for use as a building area site for the construction of apartment homes, townhomes, or commercial buildings; such term shall also include, without limitation, any contiguous or non-contiguous portion of a Parcel ancillary to the use allowable on the remainder of the Parcel, together with any and all improvements located therein or thereon.

(r) The "*Property*" shall mean and refer to the property described on Exhibit "A" attached hereto and incorporated herein by reference which is hereby subjected to this Declaration.

(s) "*R.M.C. Office*" shall mean and refer to the Office of the Register of Mesne Conveyances for Charleston County, South Carolina.

## ARTICLE II

### THE PROPERTY

Section 2.01. The Property. The real property which is and shall be held, transferred, sold, conveyed, leased, mortgaged, and occupied subject to these Covenants is known generally as "Fenwick Hall Plantation," located in the City of Charleston, Charleston County, South Carolina, and is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. Due to the private, exclusive, and unique nature of Fenwick Hall Plantation, no additional properties may be subjected to the terms and provisions of this Declaration.

## ARTICLE III

**COVENANTS, RESTRICTIONS, AND AFFIRMATIVE OBLIGATIONS  
APPLICABLE TO ALL PROPERTIES IN FENWICK HALL PLANTATION**

The Declarant has established the within additional Covenants in order to create an exclusive, private community which is unique in design, environmentally sensitive, aesthetically appealing, tranquil, functional, and convenient.

**Section 3.01. Miscellaneous Covenants, Conditions and Restrictions.**

- (a) The Property shall be used exclusively for
  - (i) single-family residential purposes,
  - (ii) townhomes,
  - (iii) apartment homes,
  - (iv) commercial activities, and
  - (v) such other activities as may be approved by the declarant.

(b) Upon the completion of construction of improvements on any Lot or Parcel, each Owner, at the sole expense of such Owner, shall be responsible for maintaining such improvements in comparable or better appearance and condition as at the time of initial completion of construction thereof, normal wear and tear between routine maintenance and repair being excepted.

**Section 3.02. Subdivision, Re-Platting, and Lot Specifications.**

(a) No Lot or Parcel shall be subdivided or its boundary lines changed, nor shall application for same be made to the City of Charleston, except with Declarant's prior, written consent, which such consent may be granted or withheld in the sole discretion of Declarant, its successors and assigns. However, Declarant hereby expressly reserves for itself, its successors and assigns, the right to replat any of the Property if Declarant determines, in its sole discretion, that the reconfiguration, alteration, or other adjustment of Property lines and boundaries would improve or enhance the value and/or aesthetic appearance of Fenwick Hall Plantation or any part thereof. Provided, however, that upon the execution of a contract of sale between Declarant and a proposed purchaser of any Lot or Parcel, Declarant shall no longer have the right to replat or otherwise alter the property lines of such Lot or Parcel under contract, unless such proposed purchaser defaults under the terms of the contract.

(b) Any Lot or Parcel may, with Declarant's written approval, be combined to create a larger Lot or Parcel, and in such instance, Declarant may alter, without limitation, the specifications and guidelines affecting the Lot or Parcel.

Section 3.03. Easements.

There are hereby reserved for the benefit of the Association and its successors and assigns, over, under, upon and across each Lot and Parcel in Fenwick Hall Plantation Subdivision, the following non-exclusive rights and easements:

- (a) a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement to enter upon any unimproved portions of any Lot or Parcel for the purpose of planting and/or maintaining landscaping, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, dead or dying trees, or other unsightly growth, removing trash, and/or such other related purposes as the Association, in its sole discretion, deems necessary and essential to maintain the quality and distinctive character of Fenwick Hall Plantation.
- (b) a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement to enter upon any Common Property for the purpose of planting and/or maintaining landscaping, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, dead or dying trees, or other unsightly growth, removing trash, and/or such other related purposes as the Association, in its sole discretion, deems necessary and essential to maintain the quality and distinctive character of Fenwick Hall Plantation.

## ARTICLE IV

**FENWICK HALL PLANTATION PROPERTY OWNERS' ASSOCIATION**

Section 4.01. Establishment and Purpose of The Association. Fenwick Hall Plantation is a private, exclusive community carefully and comprehensively planned and developed by Declarant so as to preserve, protect, complement, and enhance the natural ambiance of Fenwick Hall Plantation.

Declarant has established the Association for the purpose of exercising powers of owning, maintaining, repairing, reconstructing, improving, and administering the Fenwick Hall Plantation Common Properties, providing common services, administering and enforcing the within Covenants and the conditions and restrictions set forth herein, levying, collecting, and disbursing the Assessments and charges herein imposed, holding, owning, and utilizing the easements it may enjoy, and for other purposes.

It is Declarant's intention to convey a perpetual easement to the Association over the Fenwick Hall Plantation Common Properties and any and all improvements and personal property associated therewith, which are to be held and administered in accordance with this Declaration. Declarant further reserves the right to convey or transfer to the Association any and all rights and obligations

of Declarant set forth herein. The legal costs and expenses of such conveyances shall be borne by Declarant.

Section 4.02. Membership and Voting. Each Lot or Parcel Owner shall, by virtue of their ownership, be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Parcel, and ownership of a Lot or Parcel shall be the sole qualification for such Membership. In the event that fee title to a Lot or Parcel is transferred or otherwise conveyed, the Membership in the Association shall automatically pass to the transferee. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise effect an Owner's membership in the Association. No Owner, whether one or more persons, shall have more than one membership per Lot or Parcel.

If a Lot or Parcel is owned by more than one person, all co-Owners shall share the rights, privileges and responsibilities of Membership, subject to regulations of the Association. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Association.

Voting rights in the Association shall be based upon the percentage of the Property owned by each individual Member, and on the same basis as the division of Annual Assessments set forth in Article VI, provided that the marshland described as 95.063 acres in Tract C contained in Exhibit "A" hereto shall not count toward the voting rights of any Member of the Association.

Section 4.03. Board of Directors. The Association shall be governed by a Board of Directors, which shall consist of five (5) members. For so long as the Declarant is entitled to cast two-thirds (66 2/3 %) of the total votes of the Association, four members of the Board of Directors shall be appointed by the Declarant, and shall serve at the sole pleasure of the Declarant, and one member of the Board of Directors shall be appointed by Fenwick Tarragon Apartments, LLC, a South Carolina limited liability company. At such time as the Declarant is no longer entitled to cast two-thirds (66 2/3 %) of the total votes of the Association, or sooner at the sole discretion of the Declarant, Directors shall be elected by a majority vote of the Association by cumulative voting of the Members (for which the Articles of Incorporation shall so provide, in accordance with Section 33-31-725 of the South Carolina Code of Laws).

Section 4.04. Powers and Functions of the Association. The Association shall be and is hereby authorized and empowered to perform any and all of the following acts and services, the costs of which shall be a Common Expense.

(a) Clean-up, maintenance, landscaping, improvement, and replacement of: all Fenwick Hall Plantation Common Properties and improvements thereon, therein and thereunder, including but not limited to entrance ways, the Alley of Oaks, access roads, feeder roads and rights-of-ways, entrance signs, roadway signs, security and related systems, utility, drainage, erosion and flood control facilities, viewing areas and facilities, walkways and leisure trails, footbridges, residual areas, landscaped areas, vegetative buffers, and all other systems or areas which are a part of or appurtenant to the Fenwick Hall Plantation Common Properties and which are not maintained by Declarant or

a public authority, a public service district, a public or private utility or other person(s) or entities.

(b) Clean-up, landscaping, and maintenance of landscaping on each Lot or Parcel within the Subdivision in order to maintain and ensure the highest possible standards of appearance throughout the Subdivision. Such responsibilities include, but are not limited to, mowing, planting, pruning of trees and bushes, fertilizing, clearing, trimming, mulching, and applying pesticides and chemicals.

(c) Take any and all actions necessary to enforce the within Covenants, conditions, and restrictions, and to perform any of the functions or services required or delegated to the Association under this Declaration and any amendments or supplements thereto.

(d) Provide for the operation of the FHPARB as more particularly set forth herein.

(e) Provide or contract for security, landscaping, and managerial services and other administrative services including, but not limited to legal, accounting, and financial services, communication services informing Members of activities, notice of meetings, referendums, etc.

(f) Provide liability, hazard, or other insurance covering improvements and activities on Fenwick Hall Plantation Common Properties and providing liability and errors and omission or similar insurance for the Directors and Officers of the Association and the FHPARB as the Board may deem appropriate.

(g) Purchase and acquire personal property and equipment as necessary for the proper maintenance of the Subdivision and Fenwick Hall Plantation Common Properties.

(h) Clean-up, maintenance, landscaping, improvement and replacement of pedestrian access areas, residual tracts, walkways and leisure trails, boardwalks, and all other areas within the Property or in a reasonable proximity thereto should, in the opinion of the Association, their deterioration affect the appearance of the Property.

(i) Insect, pest and wildlife control to the extent that measures in addition or supplemental to those services as may be provided by applicable governmental authorities are deemed necessary or desirable in the discretion of the Board of Directors.

(j) Construct improvements on residual areas, Fenwick Hall Plantation Common Properties, and such other areas within the Property as the Board of Directors deems appropriate, necessary, or essential for the Subdivision.

(k) Maintenance, repair, and replacement of any drainage easements, improvements, and/or facilities, and erosion and flood control improvements located within or adjacent to the Subdivision to the extent that such services are not performed by the Declarant.

(l) In the event the Board of Directors determines that any Lot or Parcel Owner has failed or refused to comply properly with Owner's obligations with regard to the maintenance, cleaning, repair, and replacement of improvements and/or Lot or Parcel or landscaped areas as set forth herein,



then the Association, except in the event of an emergency situation, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail the extent of such maintenance, cleaning, repair, or replacement deemed necessary, and such Owner shall have fifteen (15) days therefrom within which to complete the same in a good and workmanlike manner.

In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the Assessment to which such Owner and Owner's Lot or Parcel is subject, and shall become a lien against such Lot or Parcel in favor of the Association.

The Association is further authorized and empowered to perform or provide any and all other services necessary or desirable in the judgment of the Board of Directors to carry out the Association's obligations and duties under the terms and intent of this Declaration and the By-Laws.

Section 4.05. Rules and Regulations. The Association, by and through its Board of Directors, may adopt from time to time, additional rules, regulations, and fee schedules governing the use of Fenwick Hall Plantation Common Properties and which such rules, regulations, and fee schedules shall be binding upon the Lot and Parcel Owners.

## ARTICLE V

### FENWICK HALL PLANTATION ARCHITECTURAL REVIEW BOARD

Section 5.01. Purpose of FHPARB and Provisions for Architectural Review. No landscaping, building, exterior lighting, wall, fence, or any other structure or tree, shrub, or improvements of any kind or nature shall be erected, placed, removed, or altered on any Lot or Parcel until a site plan showing the location of such improvements and landscaping, and the construction plans and specifications have been approved in writing by the FHPARB.

In addition, the FHPARB may require a current tree survey to be submitted at the Owners' expense together with any proposed building plans and specifications. The building plans and specifications and site plan, when approved by the FHPARB, must be strictly adhered to in the construction of any and all improvements of any kind or nature, including landscaping improvements, and any variance or alteration from such approved plans and specifications without written approval by the FHPARB, shall be deemed in violation of this Section 5.01.

Refusal of approval of plans, specifications and site plans, or any of them, may be based on such design guidelines, rules, and regulations as may be imposed by the FHPARB from time to time, with the FHPARB further having the right to refuse or turn down requests on purely aesthetic grounds in its sole discretion. Any material change in the appearance of any building, wall, or other

structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers, shrubs, and herbs indigenous to the area), shall be deemed an alteration requiring approval.

Section 5.02. Establishment of Fenwick Hall Plantation Architectural Review Board. The FHPARB shall consist of three (3) members, which shall be appointed by the Declarant. The Declarant shall have the right to appoint or remove any member or members of the FHPARB with Cause until such time as the FHPARB is terminated and all of its rights, powers, duties and privileges of architectural and landscaping review are transferred to the Association as set forth in Section 5.03 below. FHPARB members shall not receive any compensation for their services, but by resolution of the Board of Directors, any FHPARB member may be reimbursed for his actual expenses incurred in the performance of his duties as a member of the FHPARB. Nothing herein contained shall be construed to preclude any FHPARB member from serving the Association in any other capacity and receiving compensation therefor.

Section 5.03. Duration, Transfer of Approval Rights, and Termination. The FHPARB shall continue until such time as (i) all initial improvements (including, without limitation, all initial landscaping improvements) on all Lots or Parcels in Fenwick Hall Plantation Subdivision have been completed; (ii) certificates of occupancy issued for each and every dwelling constructed on each Lot or Parcel have been issued by the City of Charleston, S.C. At such time, the FHPARB rights, powers, duties, and privileges of architectural and landscaping review shall be transferred and assigned to the Association.

## ARTICLE VI

### COVENANTS FOR ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligations of Assessments. Declarant covenants, and each Owner of any Lot or Parcel whether or not it shall be so expressed in Owner's deed or other conveyance, shall be deemed to covenant and agree to all other terms and provisions of this Declaration and pay to the Association:

- (i) Annual Assessments or charges; and
- (ii) Special Assessments or charges for capital improvements to or for maintenance of Common Properties and other Common Expenses, emergencies and other purposes.

The Assessments, together with any penalty (to be set by the Board), interest, costs, and reasonable attorneys' fees shall be a charge upon the Lot or Parcel and shall be a continuing lien on the Lot or Parcel against which each such Assessment is made. Each such Assessment, together with interest, any penalty, costs, and reasonable Attorney's fees, shall also be the personal obligation of the person(s) or entity who was the Owner of such Lot or Parcel at the time the Assessment became due. The obligation for delinquent Assessments shall run with such Lot or Parcel and shall pass to the Owner's successors in title. Upon written request, the Association shall provide or cause to be provided an accounting of an Owner's Assessments and any delinquency in the payment thereof. All

reports of delinquency must be given subject to any state and federal laws regarding disclosure of a debtor's financial information.

Section 6.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively in connection with the operation and administration of Fenwick Hall Plantation. Such use shall include, but is not limited to, the payment of all Common Expenses; to promote and maintain the health, safety, welfare, and convenience of the Owners and their guests and tenants; for the acquisition, construction, landscaping, repair, replacement, improvement, maintenance, and use of Fenwick Hall Plantation Common Properties; labor, equipment, materials, services, management, supervision, security, garbage service, water, sewer and utility service in connection with the Fenwick Hall Plantation Common Properties; insurance premiums and deductibles; emergency repairs, reconstruction after casualty loss, and such other needs, without limitation, as may arise or as may be required in the sole discretion of the Board of Directors. Until and unless otherwise approved by the Board of Directors, all Assessments shall be levied in proportion to the total acreage owned by each Lot or Parcel Owner within the Development.

Section 6.03. Annual Assessment. The Declarant initially and thereafter the Board of Directors shall determine the amount of the Annual Assessment based on the annual budget of the Association as provided herein. When the Board of Directors determines the Annual Assessment for the ensuing fiscal year, it shall cause to be prepared in connection therewith an annual budget showing the services provided by or on behalf of the Association and the costs thereof.

At least thirty (30) days prior to the end of the calendar year, the Board of Directors shall determine the amount of the Annual Assessment for the following calendar year, and shall notify every Owner subject thereto of their pro rata share, as set forth in Section 6.07 of this Article.

Section 6.04. Special Assessments.

(a) In addition to the Annual Assessments authorized above, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Fenwick Hall Plantation Common Properties, including, but not limited to, fixtures, personal property related thereto and for any other purposes not prohibited by this Declaration. Such Special Assessments may be collected by the Association on a monthly, quarterly, or annual basis.

(b) In addition to the Annual and Special Assessments authorized above, the Board of Directors may levy, in any fiscal year, an amount not to exceed one hundred (100%) percent of the Annual Assessment for such fiscal year a Special Assessment applicable to that year only for the purpose of maintenance or repairs of the Fenwick Hall Plantation Common Properties, including, fixtures, landscaping, and personal property related thereto; for the costs of the taxes for and the utilities supplied to the Fenwick Hall Plantation Common Properties; for any repairs, restoration, reconstruction, maintenance, or improvements made necessary by any emergencies including but not limited to damages resulting from storm, wind, earthquake, and flood as determined in the sole discretion of the Board of Directors, and for any other purpose not prohibited by this Declaration.

Section 6.05. Effect of Non-Payment of Assessments. Any Assessment (whether Annual, Special, Landscaping or otherwise) not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen (18%) percent per annum; or (b) the maximum rate provided by applicable law. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against such Owner's Lot or Parcel in like manner as a mortgage of real property, or both. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of the outstanding Assessment(s) due and payable and collect the same through foreclosure. Penalties (as determined by the Board), interest, costs, and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such Assessment, and collectable as such Assessment.

Section 6.06. Subordination of Lien. The lien of Assessments provided for herein shall be subordinate to the lien of any first mortgage upon any Lot or Parcel. Sale or transfer of any Lot or Parcel shall not affect the Assessment lien. However, the sale or transfer of any Lot or Parcel pursuant to a mortgage foreclosure shall extinguish the lien of such Assessments as to the payment of the portion thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve any subsequent Owner of such Lot or Parcel from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 6.07. Allocation of Assessments Among Lot and Parcel Owners. All Assessments provided for herein shall be divided among the Lot and Parcel Owners, based upon the number of acres of property owned by each within the Property. Based upon the acreage held by each owner, which shall be calculated to the 100<sup>th</sup> of an acre, all Assessments shall be divided amongst the Lot and Parcel Owners on a pro rata basis, provided that the marshland described as 95.063 acres in Tract C contained in Exhibit "A" hereto shall not count toward the acreage owned by any Member of the Association.

## ARTICLE VII

### FENWICK HALL PLANTATION COMMON PROPERTIES

All Fenwick Hall Plantation Common Properties are ultimately intended for the common use and enjoyment of the Association, the Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, subject to any operating rules promulgated by the Association, its successors and assigns, and nothing contained herein or set forth on any plat shall in any way or manner be construed as a dedication to the public of any of the Fenwick Hall Plantation Common Properties and other such areas and amenities associated therewith.

Section 7.01. Members' Easements of Enjoyment. Subject to the provisions of this Declaration and the rules and regulations of the Association, every Owner shall have a non-exclusive easement of enjoyment in and to the Fenwick Hall Plantation Common Properties, and such easement shall benefit and be appurtenant to and shall run with the title to each and every Lot. It is the intention of Declarant that such rights of enjoyment shall be and are hereby deemed for the use and benefit of the Property Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and

assigns, and successors-in-title, subject to such rules and regulations as may be established by the Board of Directors for the Association.

Section 7.02. Perpetual Commercial Easement Over Fenwick Hall Plantation Common Properties. Declarant agrees, to convey or cause to be conveyed to the Association (and the Association agrees to accept) as Fenwick Hall Plantation Common Properties, a perpetual commercial easement for use of all Common Properties, together with all structures, improvements, appurtenances, landscaping, and infrastructure located thereon and/or thereunder now or at the time of such conveyance. Such easements will be conveyed prior to the conveyance of any Common Properties to any third party by the Declarant.

The Association shall be responsible for the maintenance, repair, and replacement of any areas intended for the common use and enjoyment of the Owners once such areas have been conveyed or a perpetual commercial easement granted to the Association; provided, however, that Declarant first provides the Association with written notice of its intention to convey or to grant easements in favor of the Association over such areas for use as Fenwick Hall Plantation Common Properties.

Section 7.03. Extent of Members' Easements. The Owners' non-exclusive rights and easements for enjoyment of Fenwick Hall Plantation Common Properties shall be subject to the following:

(a) The rights of Declarant to convey the Fenwick Hall Plantation Common Properties to the Association, or to any other non-profit agency or governmental authority, subject to Owner's approval rights, if required hereunder.

(b) Non-exclusive, appurtenant, perpetual, permanent, assignable, transmissible, commercial easements in favor of Declarant and the Association for access, ingress, egress, and for the installation, maintenance, inspection, repair, and replacement of all utilities and services, irrigation systems, landscaping, and for all other lawful purposes deemed necessary, useful, or beneficial, in the discretion of Declarant and the Association, for the orderly development by third-party developers of Fenwick Hall Plantation; and the right of Declarant and of the Association, their successors and assigns, to grant, reserve, and accept such easements and rights-of-way through, under, over, and across the Fenwick Hall Plantation Common Properties.

(c) The right of the Association, as provided in its By-Laws, to suspend the voting and enjoyment rights of any Owner for any period during which any Assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(d) The right of the Declarant and the Association, as the case may be, to establish rules and regulations for the Common Properties, to charge Common Expenses and to prescribe fees and charges from time to time for use of any amenities which may now or hereafter be constructed on or near the Fenwick Hall Plantation Common Properties.

(e) The right of Declarant and the Association to erect and maintain a security gate for ingress and egress to Fenwick Hall Plantation or any portion thereof, and to promulgate strict privacy rules relating to passage through such gate.

(f) All applicable covenants, conditions, restrictions and easements of record, including, without limitation, all applicable regulations and ordinances adopted or as may be adopted in the future by any governmental agency or entity having jurisdiction over the Property. This Declaration is intended as a supplement to any such governmental regulations or ordinances, and shall be interpreted to be consistent therewith wherever possible.

(g) The right of the Association, in accordance with its By-Laws, to borrow money from the Declarant or any lender for the purpose of improving and/or maintaining the Fenwick Hall Plantation Common Properties and providing services authorized herein, and in connection therewith, to mortgage all or part of the Fenwick Hall Plantation Common Properties to secure any such loan.

## ARTICLE VIII

### INSURANCE AND CASUALTY LOSSES

#### Section 8.01. Insurance.

(a) Property Insurance. The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect casualty insurance at replacement value, in such form and with such coverage and deductibles as the Board deems appropriate for the benefit of the Association, insuring all insurable improvements in and to the Fenwick Hall Plantation Common Properties against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief; such coverage, if available at reasonable costs, to be in an amount sufficient to cover the full replacement cost (without depreciation, to include anticipated costs of demolition and clearing prior to building, but subject to such deductible amounts as are deemed reasonable by the Board), of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) Liability Insurance. The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy of not less than \$2,000,000, covering all Fenwick Hall Plantation Common Properties and all damage or injury caused by the negligence of the Association, FHPARB, their Members, Directors, and Officers, or any of their agents. Such public liability policy shall provide such coverages as are deemed necessary by the Board.

(c) Other Insurance. The Board or its duly authorized agents shall have the authority to and may obtain: (i) worker's compensation insurance to the extent necessary to comply with any applicable law; and (ii) any such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners, and the cost thereof shall be a Common Expense. The Association shall have exclusive authority to adjust losses under such insurance policies with respect

to the Subdivision; provided, however, that no mortgagee or other security holder of the Fenwick Hall Plantation Common Properties having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, relating thereto.

(d) Each Owner shall be solely responsible for obtaining, at each such Owner's sole expense, public liability, property damage or casualty coverage, flood, title, and any other insurance coverage in connection with such Owner's individual Lot(s) or Parcels and all improvements thereon, as each such Owner deems necessary or appropriate.

**Section 8.02. Damage to or Destruction of Fenwick Hall Plantation Common Properties.** Should any of the Fenwick Hall Plantation Common Properties or other property owned by and/or covered by insurance written in the name of the Association as such trustee for the Owners, be damaged or destroyed by fire, windstorm, flood, or any other casualty, the Board of Directors, or its agent shall be responsible for timely filing all claims and adjustments arising under such insurance. In such event, the Board shall be further responsible for obtaining detailed estimates for repairing or restoring and/or reconstructing such damaged property to substantially the same condition as existed prior to such casualty, and such estimates must be obtained by the Board from reputable, reliable, licensed individuals or companies. The Association shall restore, repair, or replace such damaged improvements, including structures, trees, shrubbery, fences, lawns, landscaping, bridges, signage, personal property, and natural vegetation, within sixty (60) days of such damage or destruction, or as soon thereafter as reasonably possible under the circumstances. In the event insurance proceeds, if any, are insufficient to repair, restore, and/or replace such damaged or destructed property and reserve funds as may have been appropriated or established for such purpose are, in the sole discretion of the Board, insufficient or inadequate to defray the costs thereof, or would unreasonably deplete such reserve funds, the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Members, in an amount sufficient to provide adequate funds to pay such excess costs of repair, reconstruction, or replacement. Such a Special Assessment shall be levied against the Owners in the same pro rata manner as Annual Assessments are levied, and additional Assessments may be made at any time during or following the completion of any repair, reconstruction, or replacement. Any and all sums paid to the Association under and by virtue of such Special Assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds, if any, and Assessments shall be disbursed by the Association in payment of such repair, reconstruction, or replacement pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any funds remaining after defraying such costs shall be retained by and for the benefit of the Association. Special Assessments levied according to this Section may include but are not limited to Special Assessments for insurance deductibles, temporary emergency repairs and uninsured losses as well as the legal or other costs of collection.

**Section 8.03. Damage to or Destruction of Improvements to Lots or Parcels.** In the event of damage or destruction by fire or other casualty to any improvements to any of the Lots or Parcels, the Owner thereof, at his sole expense, shall be responsible for clearing away the ruins and debris of any damaged improvements or vegetation within thirty (30) days of such damage or destruction, so that the Lot or Parcel is promptly restored to a clean, orderly, safe, and sightly condition. In the event such Owner shall fail or refuse to clear away the ruins and debris of any damaged improvements within said thirty (30) day period, or such extended period as the Board may allow, in its sole

discretion, the Association may enter the Lot or Parcel, and its agents may undertake (but are not obligated to do so), any such clearing and charge the costs thereof to the responsible Owner.

In the event of such damage or destruction, the responsible Owner shall repair, restore, or rebuild the Lot or Parcel and/or improvements to substantially the same condition as existed prior to such casualty (or to such new condition as the FHPARB may allow) in accordance with the terms, conditions, provisions, and Covenants set forth herein, and all applicable zoning, subdivision, building and other laws, ordinances and regulations. All repairing, restoring, or rebuilding of improvements to any Lot or Parcel as originally existing shall be promptly commenced no later than 90 days following such damage or destruction, and shall be carried through, without interruption, diligently to conclusion. Should such Owner fail or refuse to promptly repair, restore, or rebuild such Lot or Parcel or improvements as provided herein, the Association may, at its option, undertake such repair, restoration, or replacement, charge the cost thereof to the responsible Owner, and have a lien on the Lot or Parcel for the repayment thereof as an Assessment.

## ARTICLE IX

### GENERAL PROVISIONS

Section 9.01. Duration. The Covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or any Lot or Parcel Owner, their respective, heirs, personal representatives, successors, successors-in-title and assigns, for a period of twenty-five (25) years from the date of recordation of this Declaration in the R.M.C. Office. Upon the expiration of said twenty-five (25) year period, this Declaration shall be automatically renewed and extended for additional successive ten (10) year periods, unless otherwise agreed to in writing by the Association.

Section 9.02. Amendments. Declarant specifically reserves for itself and its successors and assigns, the exclusive right and privilege to amend this Declaration at any time, by written instrument duly recorded in the R.M.C. Office, with or without the prior consent or approval of either any Owner or mortgagee holding a lien on any Lot or Parcel.

Any amendment made pursuant to this Section shall be effective only upon the date of recordation of such instrument in the R.M.C. Office or such other later date as may be specified in such amendment; and each Owner, by the acceptance and recordation of a deed of conveyance to a Lot or Parcel, agrees for himself, and his successors in title, to be bound by such amendments as are permitted under this Section.

Section 9.03. Enforcement and Waiver. Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association, or by any Owner to enforce in whole or in part any covenant or restriction herein contained, regardless of the number or kind of violations or breaches which may have occurred, shall in no event be deemed a waiver of the right to do so



thereafter. This Declaration shall be governed by, construed, and is enforceable under the laws of the State of South Carolina.

**Section 9.04. Interpretation.** The Board of Directors shall have the right to determine all questions arising in connection with this Declaration and the By-Laws and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding upon the Owners. In all cases, the provisions of this Declaration and the By-Laws shall be given the interpretation or construction, in the opinion of the Board, that will best preserve, protect, maintain, and benefit Fenwick Hall Plantation Subdivision.

**Section 9.05. Severability.** Should any covenant or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase, or term of this Declaration be declared or rendered void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

**Section 9.06. Assignment.** Declarant reserves the right to assign to the Association or any one or more persons, firms, corporations, partnerships, or associations, any and all rights, powers, duties, easements and estates reserved or given to the Declarant in this Declaration, including, without limitation, the right to grant and assign utility easements from time to time over, under, and within Fenwick Hall Plantation Common Properties.

**Section 9.07. Notice.** Any notice, demand, or other instrument or written communication required or permitted to be given, served, made or delivered to Declarant hereunder may be given, served, made or delivered by service in person or by mailing the same by certified mail, return receipt requested, postage prepaid, or by overnight courier (e.g., Federal Express), addressed as follows:

Penny Creek Associates, L.L.C.  
attn: Mr. Michel Laplante  
151 Tree Duck  
Kiawah Island, SC 29455

**With Copies to:**

Buist & Byars, L.L.C.  
Thomas G. Buist, Esq.  
192 East Bay Street  
Post Office Box 570  
Charleston, SC 29402

or to such other addresses as Declarant may request by written notice to the Owners. Any such notice, demand or other instrument or written communication mailed as above provided shall be deemed to have been given, served, made or delivered at the time that it was personally served or with sufficient postage placed in the mail, certified return receipt requested, or delivered to the

overnight courier. Delivery of any notice, demand or communication to a Lot or Parcel Owner shall be made in accordance with the By-Laws.

**Section 9.08. Limited Liability.** Neither Declarant, nor the Association, nor the FHPARB shall be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person; (b) caused in whole or in part from rain or other surface water or any tidal waters which may leak or flow from and/or on or along any portion of the Fenwick Hall Plantation Common Properties; or (c) caused by the malfunction or failure of any pipe, plumbing, drain, conduit, pump, road, appliance, structure, equipment, security system, utility line, or facility which the Association is responsible for maintaining.

The Declarant, FHPARB, and the Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Fenwick Hall Plantation Common Properties or any other portion of the Subdivision, nor any alleged trespass or damage resulting from entering upon any Lot or Parcel under any authority provided herein and taking actions thereon as are allowable hereunder.

Further, no diminution, abatement or deferral of Assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of Declarant or the Association to take action or perform a function required to be taken or performed by Declarant or the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of Declarant or the Association, or from any action taken by them to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay any such Assessment authorized herein being separate and independent obligations on the part of each Owner.

**Section 9.09. Gender and Number.** All pronouns used herein shall be deemed to include the masculine, the feminine and non-personal entities, as well as the singular and plural wherever the context requires or permits.

**Section 9.10. Construction.** The language in all of the parts of this Declaration and the By-Laws shall be construed as a whole according to its fair meaning, and not strictly for or against either Declarant, FHPARB, the Association, or the Lot and Parcel Owners. By the acceptance and the recordation of a deed of conveyance to any Lot or Parcel Owner in the R.M.C. Office, such Owner acknowledges that such Owner and/or his counsel have reviewed this Declaration, and that any rule of construction to the effect of ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Declaration, the By-Laws, or any amendments thereto.

**Section 9.11. Termination of Association.** In the event this Declaration is declared void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or the subject matter hereof, and such adjudication occurs within ten (10) years of the date of recording of this Declaration, all Fenwick Hall Plantation Common Properties and other properties belonging to the Association at the time of such adjudication shall revert to the Declarant, its successors and assigns, and the Declarant, its successors and assigns, shall own and operate said Fenwick Hall Plantation Common

Properties and other properties as trustee for the use and benefit of the Owners as set forth herein. If said adjudication shall occur on a date more than ten (10) years after the date of recording of this Declaration, all Fenwick Hall Plantation Common Properties and other properties owned by the Association at such time shall be transferred by the Association to a trustee appointed by the Court of Common Pleas of Charleston County, South Carolina, which trustee shall own and operate said Fenwick Hall Plantation Common Properties and other properties for the use and benefit of Owners within the Subdivision as set forth herein.

(a) In any of the foregoing events, each Lot or Parcel shall continue to be subject to the Assessments which shall be paid by the Owner to the Declarant or trustee, whichever becomes successor in title to the Association. The amount of the Assessments which may be charged by the Declarant or trustee shall be established in accordance with the provisions set forth herein.

(b) Any past due Assessments together with any delinquent payment fees thereon, and all costs of collection, interest and reasonable attorneys' fees, shall continue to be the personal obligation of the Owner and a continuing lien on the Lot or Parcel and all improvements thereon against which the Assessment was made.

(c) The Declarant or trustee, as the case may be, shall be required to use the funds collected as Assessments for the operation, maintenance, repair, and preservation of the Subdivision in accordance with this Declaration, and the Declarant or trustee may charge as a part of the costs of such services and functions a reasonable fee for its services in carrying out the duties herein provided. Neither the Declarant nor the trustee shall have the obligation to provide for the operation, maintenance, repair, and upkeep of the Fenwick Hall Plantation Common Properties once the funds provided by the Assessments may have become exhausted.

(d) The Declarant or trustee shall have the right and power to convey title to the Fenwick Hall Plantation Common Properties and to assign the rights of Declarant and the Association hereunder, provided that such conveyance is first approved in writing by the Owners by a two-thirds majority vote, with voting rights in the same percentages as set forth for the Association Members herein. The agreement of the required percentage of Owners to such a conveyance and/or assignment of rights shall be evidenced by the sworn statement executed by the proper authorized officer(s) of Declarant, or the trustee, attached to or incorporated in such instrument executed by the Declarant or trustee, stating that the agreement of the required parties was lawfully obtained in accordance with this Declaration.



"TRACT B-2" (TMS Number 346-00-00-004)

ALL that piece, parcel or tract of land, together with the improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "Tract 'B-2' 42.7 Acres", on a plat entitled "SUBDIVISION OF PROPERTY IN THE NAME OF F-H-P REALTY LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, S.C.", by Forrest G. Calvert, RLS, dated September 27, 1979, and recorded in the RMC Office for Charleston County, South Carolina (hereinafter the "RMC Office") in Plat Book AO at page 74, said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully be shown. (TMS Number 346-00-00-004)

AND TRACT "A" (TMS Number 346-00-00-066)

ALL that piece, parcel or tract of land, together with the improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "FHP Realty Tract 'A' 5.503 Acres" on a plat entitled "PLAT SHOWING THE ABANDONMENT OF PROPERTY LINES FOR TMS NO. 346-00-00-012 AND TMS NO. 346-00-00-011, AND THE SUBSEQUENT SUBDIVISION OF TMS NO. 346-00-00-007 INTO TRACT 'A' CONTAINING 5.503 ACRES AND TRACT 'B' CONTAINING 7.497 ACRES OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA" by Hoffman Lester Associates, Inc., dated September 24, 1997, and recorded January 20, 1998, in the aforesaid RMC Office in Plat Book EC at page 263. (TMS Number 346-00-00-066)

The aforesaid Tract B-2 and Tract A are also more particularly shown on that certain plat entitled "PLAT SHOWING PROPERTY LINE BETWEEN TMS NO. 346-00-00-004, TRACT B-2 (CONTAINING 42.49 ACRES) AND TMS NO. 346-00-00-007, RESIDUAL TRACT B (CONTAINING 5.50 ACRES) TO FORM TRACT B-2 (CONTAINING 47.99 ACRES), OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA", prepared by Hoffman Lester Associates, Inc., dated April 7, 2000, and recorded as Exhibit "C" to that certain deed of conveyance from FHP Realty Company, A Partnership, to Penny Creek Associates, L.L.C., and recorded August 8, 2001 in Book O352, page 691, in the RMC Office for Charleston County, South Carolina

TOGETHER WITH a twenty-foot (20') non-exclusive easement in common with Helena Igoe Blanchard, her heirs and assigns, and others entitled thereto, in favor of "Tract B" above-described, for ingress and egress over, upon and across that certain twenty-foot (20') easement extending from Maybank Highway on the south to "Tract A" on the north, as said Tract A is shown on that certain plat recorded in Plat Book AK at page 76 in the RMC Office, which easement is granted in that certain deed of conveyance from Helena Igoe Blanchard to FHP Realty Company, A Partnership, dated April 27, 1978, and recorded in Book P115, page 273, in the RMC office.

This is the same property conveyed to the Declarant herein by deed of conveyance of FHP

Realty Company, A Partnership, dated August 7, 2000, and recorded August 8, 2001 in Book O352, page 691, in the RMC Office for Charleston County, South Carolina.

AND ALSO TRACT "C": (TMS Number 346-00-00-066)

ALL that certain piece, parcel or lot of land, situate, lying and being in City of Charleston, County of Charleston, South Carolina, and being shown and delineated as TRACT "C", 59.280 acres of highland and 95.063 acres of marshland, on a plat by Forrest G. Calvert, dated November, 1977, entitled in part "Plat Showing Subdivision of Fenwick Hall Plantation, 237.176 Ac. Highland 148.058 Ac. Marsh Located on Johns Island, Charleston County, South Carolina. Property of Mrs. Helena Igoe Blanchard", and recorded in Plat Book AK, at page 76, in the RMC Office for Charleston County, South Carolina (the "RMC Office"), and having such location, size, shape, buttings, boundings, and dimensions as will appear by reference to said plat which is incorporated herein by reference, be all the dimensions and measurements shown thereon a little more or less.

SAVING AND EXCEPTING that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, described as 0.97 acres of land as conveyed to the South Carolina Department of Transportation in that certain deed of conveyance from Fenwick Acres dated April 16, 1998, and recorded July 28, 1998, in Book R307, page 246, in the RMC Office.

The aforesaid property and said 0.97 acre parcel are more particularly shown on that certain plat prepared by Southeastern Surveying, Inc., entitled "A Boundary Survey of Tract "C" Containing 153.153 Acres, Owned by Fenwick Acres Located in the City of Charleston, Charleston County, South Carolina", dated March 23, 1999, and recorded in the RMC Office in Plat Book ED, at page 70.

This is the same property conveyed to the Declarant herein by deed of conveyance of Fenwick Acres, A Partnership, dated March 25, 1999, and recorded March 25, 1999 in Book D323, page 311, in the RMC Office for Charleston County, South Carolina, and also by deed of Julius H. Weil, Jr., dated March 25, 1999, and recorded in Book D323, page 439, in the aforesaid RMC Office.

Initial Common Property Description

Those certain common areas more particularly depicted on the attached Exhibit B, entitled "Vintage at Fenwick, City of Charleston, South Carolina", dated November 29, 2001, and produced by Hoffman Lester Associates, Inc. As more particularly set forth on this Exhibit B, the Initial Common Properties shall include the "Leisure Path", "6' Wide Boardwalk" and the "Fenwick Hall Allee" and its adjacent live oaks, as more particularly depicted thereon.

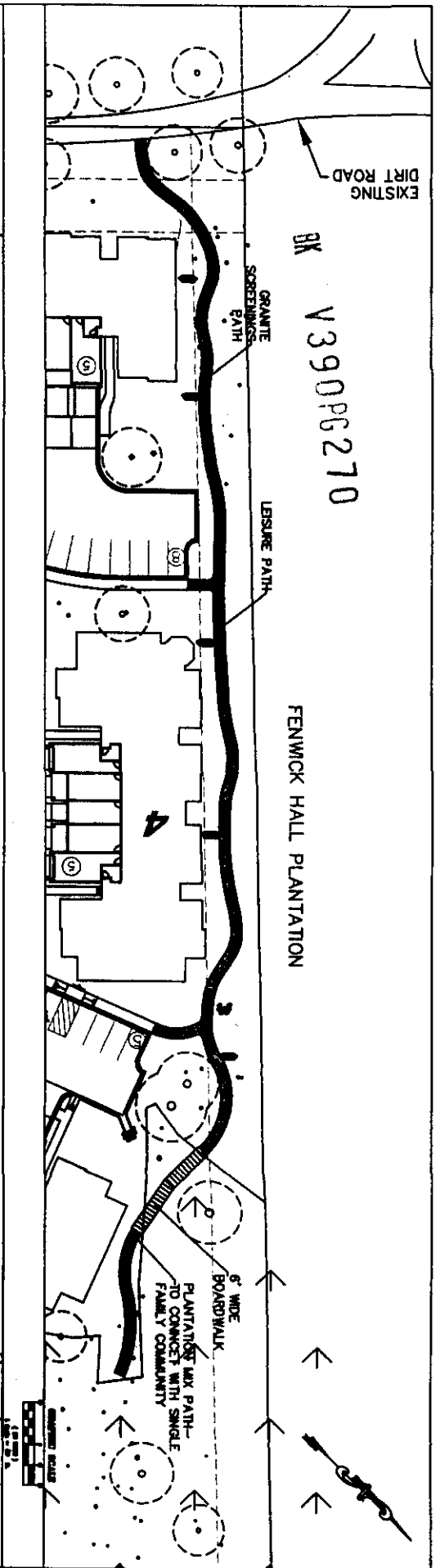
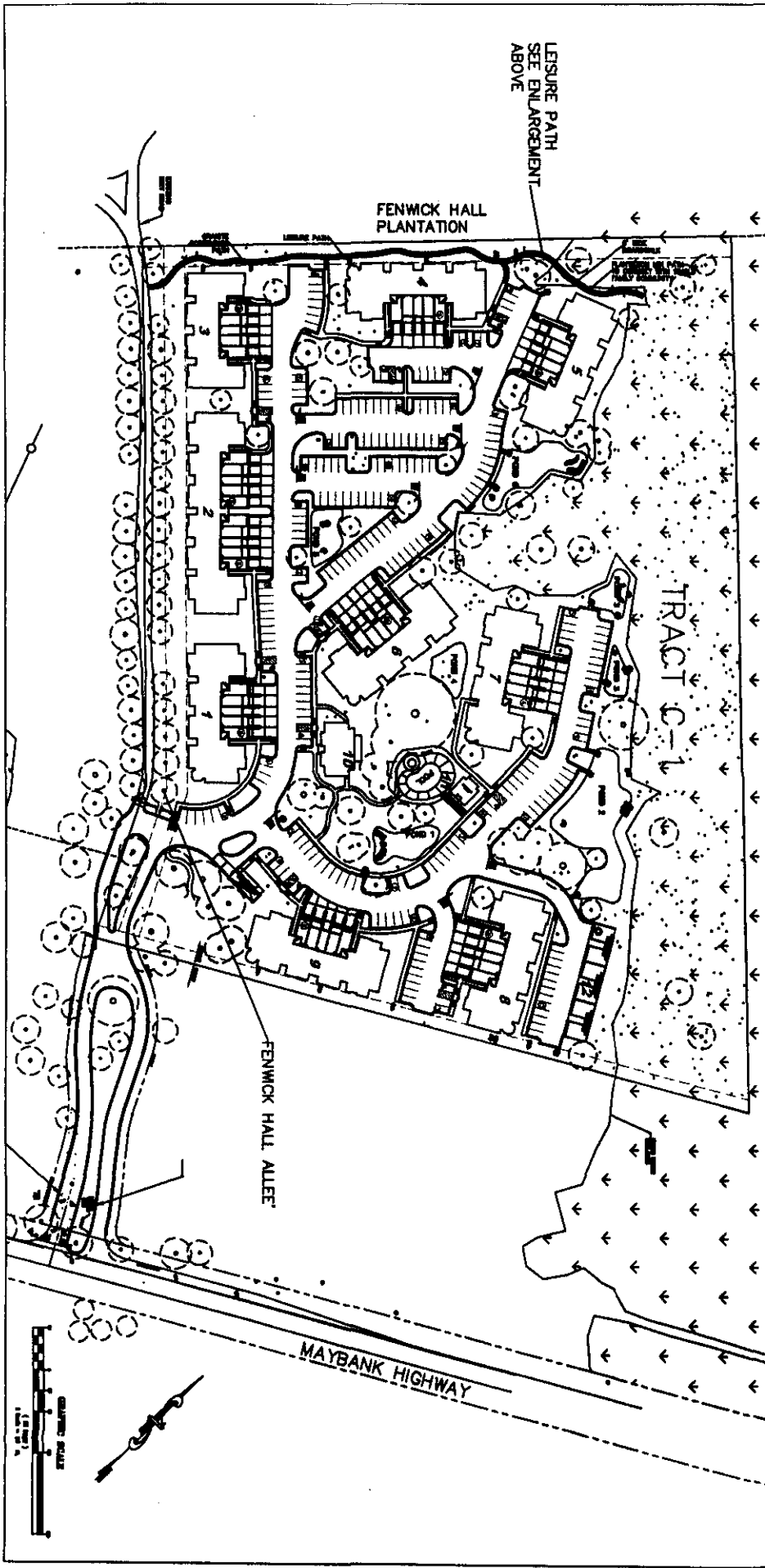


EXHIBIT 'B'

VINTAGE AT FENWICK  
CITY OF CHARLESTON, SOUTH CAROLINA

PROJECT	FENWICK
DRAWING NO.	04350-50
DATE	11/10/01
SCALE	AS SHOWN
DESIGNED BY	HLA
DRAWN BY	HLA
CHECKED BY	HLA
APPROVED BY	HLA
DATE	11/10/01

1 OF 1

**HLA** HOFFMAN LESTER ASSOCIATES, INC.  
 Land Planning • Civil Engineering • Landscape Architecture  
 Surveying • Land Surveying

20 LINDSAY DRIVE • CHARLESTON, S.C. • 29407 • (843) 765-1166



By-Laws of the Fenwick Hall Plantation Property Owners Association, Inc.

**ARTICLE I**  
**General**

Section 1.01. Applicability. These By-Laws provide for the self-government of Fenwick Hall Plantation Property Owners Association, Inc., in accordance with the Articles of Incorporation filed with the Secretary of State of South Carolina and the Declaration of Covenants and Restrictions for Fenwick Hall Plantation, recorded in the RMC Office for Charleston County, South Carolina (the "Declaration").

Section 1.02. Name. The name of the association is Fenwick Hall Plantation Property Owners Association, Inc. ("Association").

Section 1.03. Definitions. The terms used herein shall have their generally accepted meanings or such meaning as are specified in Article I of the Declaration.

Section 1.04. Membership. Each Lot or Parcel Owner shall, by virtue of their ownership, be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Parcel, and ownership of a Lot or Parcel shall be the sole qualification for such Membership. In the event that fee title to a Lot or Parcel is transferred or otherwise conveyed, the Membership in the Association shall automatically pass to the transferee. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise effect an Owner's membership in the Association. No Owner, whether one or more persons, shall have more than one membership per Lot or Parcel.

If a Lot or Parcel is owned by more than one person, all co-Owners shall share the rights, privileges and responsibilities of Membership, subject to regulations of the Association. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Association.

Voting rights in the Association shall be based upon the percentage of the Property owned by each individual Member, and on the same basis as the division of Annual Assessments set forth in Article VI of the Declaration.

Section 1.05. Majority. As used in these By-Laws, the term "majority" shall mean those votes, totaling more than fifty percent (50%) of the total number of eligible votes. Unless otherwise specifically stated, the words "majority vote" mean more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these By-Laws, all decisions shall be by majority vote.

Section 1.06. Establishment and Purpose of The Association. Fenwick Hall Plantation is a private, exclusive community carefully and comprehensively planned by Declarant so as to preserve, protect, complement, and enhance the natural ambiance of Fenwick Hall Plantation.

Declarant has established the Association for the purpose of exercising powers of owning, maintaining, repairing, reconstructing, improving, and administering the Fenwick Hall Plantation Common Properties, providing common services, administering and enforcing the within Covenants and the conditions and restrictions set forth herein, levying, collecting, and disbursing the Assessments and charges herein imposed, holding, owning, and utilizing the easements it may enjoy, and for other purposes.

It is Declarant's intention to convey a perpetual easement to the Association over the Fenwick Hall Plantation Common Properties and any and all improvements and personal property associated therewith, which are to be held and administered in accordance with this Declaration. Declarant further reserves the right to convey or transfer to the Association any and all rights and obligations of Declarant set forth herein. The legal costs and expenses of such conveyances shall be borne by Declarant.

## **ARTICLE II**

### **Meeting of Members**

Section 2.01. Annual Meetings. The regular annual meeting of the members shall be held during the month of December of each year with the date, hour, and place to be set by the Board of Directors.

Section 2.02. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more members of the Board of Directors, or upon written petition of twenty-five percent (25%) of the Owners. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition, and the Secretary shall send notice of the meeting in accordance with these By-Laws.

Section 2.03. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each Owner of record a notice of each annual or special meeting of the Association at least fifteen (15) days prior to each meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it will be held. The notice of an annual meeting shall state the time and place of the meeting. If any Owner wishes notice to be given at an address other than his or her Lot or Parcel, the Owner shall designate in writing to the Secretary such other address. The mailing or delivering of notice of meetings in the manner provided in this Section shall be considered proper service of notice.

Section 2.04. Waiver of Notice. Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners,

either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of such notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 2.05. Quorum. Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast fifty percent (50%) of the vote of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or by these By-Laws shall not be counted as eligible votes toward the quorum requirement.

Section 2.06. Adjournment. Any meeting of the Owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 2.07. Proxy. Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or telefax transmission to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy. In the event a member neither attends the meeting nor returns an executed proxy, then such member shall be deemed to be present for purposes of determining a quorum and shall be deemed to have given his proxy to and for the majority present and voting.

Section 2.08. Action Without a Meeting. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter.

(a) A written ballot shall:

- (1) Set forth each proposed action; and
- (2) Provide an opportunity to vote for or against each proposed action.

(b) Approval by written ballot pursuant to this Section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as

the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the Association in order to be counted.

(d) A written ballot may not be revoked. The Association shall maintain such ballots in its file for a period of at least three (3) years.

**Section 2.09. Order of Business.** At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these By-Laws or Articles of Incorporation.

**Section 2.10. Record Date.** The Association may establish such record date for Membership as may be authorized by the South Carolina Nonprofit Corporation Act or applicable South Carolina law.

### **ARTICLE III Board of Directors**

**Section 3.01. Composition.** The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of five (5) persons. The directors shall be Owners of Lots or spouses of such Owners; provided, however, no Owner and his or her spouse may serve on the Board at the same time, and no co-owners may serve on the Board at the same time.

**Section 3.02. Directors During Declarant Control.** Until such time as the Declarant does not hold two-thirds (66 2/3 %) of the votes of the Association, Declarant shall have the right and power to select and appoint all members of the Board of Directors. The initial directors shall be selected by the Declarant, acting in its sole discretion, and shall serve at the pleasure of the Declarant so long as the Declarant holds two-thirds (66 2/3 %) of the votes of the Association. The directors selected by Declarant need not be Members of the Association or Owners.

**Section 3.03. Veto.** Declarant shall have the veto power over all actions of the Board of Directors of the Association as is more fully provided below. This power shall expire when waived in writing by the Declarant, or fifteen (15) years from the date of recording of the Declaration, whichever first occurs. This veto power shall be exercised only by Declarant, its successors and assigns. The veto shall be as follows:

No action authorized by the Board shall become effective, nor shall any action, policy or program be implemented until and unless:

(a) Declarant shall have been given written notice of the meeting at which an action is to be taken by certified mail, return receipt requested or by personal delivery, at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies with the terms of these By-Laws as to regular and special meetings of the Directors, and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Declarant shall be given the opportunity at any such meeting, if Declarant so desires, to join in, or to have its representatives or agents join in, discussion from the floor of any prospective action, policy or program to be implemented by the Board. Declarant and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the Association and/or the Board. At such meeting, Declarant shall have, and is hereby granted, a veto power over any such action, policy or program authorized by the Board of Directors and to be taken by said Board, the Association or any individual member of the Association if Board approval is necessary for said member's action. Said veto may be exercised by Declarant, its representatives, or agents at the meeting held pursuant to the terms and provisions hereof or in writing within ten (10) days of written notice of the proposed action. Any veto power shall not extend to the requiring of any action or counteraction on behalf of the Board or Association. If Declarant so desires, Declarant may construe this veto power as Declarant, being a member of the Board of Directors, existing in a class of directors independent from the other Board members with a term equal to the term of the veto power and with the powers as described herein.

#### Section 3.04. Election and Term of Office.

(a) Directors shall serve for terms as provided herein, to wit: initially, the term of two (2) Directors shall be fixed at one (1) year; the term of two (2) Directors shall be fixed at two (2) years; and the term of one (1) Director shall be fixed at three (3) years. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of three (3) years. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of three (3) years. If additional directors shall exist, their initial terms shall be fixed so as to create a staggered term thereafter. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association or until they resign, whichever first occurs.

(b) At the first annual meeting of the membership after the termination of the Declarant's majority position in the Association, and at each annual meeting of the membership thereafter, Directors shall be elected by members of the Association in accordance with their voting powers, as further specified in the Declaration and the Articles of Incorporation. Members shall vote on all directors to be elected, and the candidates receiving a plurality of votes shall be elected.

Section 3.05. Removal of Members of the Board of Directors. Any one or more of the members of the Board of Directors may be removed with or without cause by a Majority of the members of the Association and a successor may then and there be elected to fill the vacancy thus created. Moreover, any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than sixty (60) days past due in payment of any assessment may be removed by the vote of a Majority of the other directors. Any director whose removal has been proposed shall

be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 3.06. Vacancies. Vacancies in the Board of Directors caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office for the remainder of the term of the director being replaced.

Section 3.07. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 3.08. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract, unless requested by any other director to leave the room during the discussion.

Section 3.09. Nomination of Directors. Except with respect to Directors selected by the Declarant, nomination for election to the Board shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the members to serve from the time of appointment until the close of the annual meeting, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor, also. All candidates shall have a reasonable opportunity, if they so desire, to communicate their qualifications to the members and to solicit votes.

Section 3.10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least twice during each fiscal year. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership.

Section 3.11. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Vice President, Secretary, or Treasurer in like manner on like notice on the written request of at least two (2) directors.

Section 3.12. Waiver of Notice. Any director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall also constitute a waiver of the notice by him or her of the time and place of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 3.13. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book recorded therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. A Majority of directors shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other .

Section 3.14. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 3.15. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the directors consent in writing to such action. Such written consent must describe the action taken and be signed by no fewer than all of the directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

Section 3.16. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Property and may do all such acts and things as are not by the Declaration, the Articles of Incorporation, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following (subject, however, to the limitation provided for in the Declaration), in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all Common Properties;

(d) designate, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Property, Association property, and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessment, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including, without limitation, monetary fines;

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Property in accordance with the other provisions of the Declaration and these By-Laws, after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By Laws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expense incurred; and

(m) contracting with any person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 3.17. Limitations on Powers and Duties of the Association. Notwithstanding any other provision contained herein to the contrary, neither the Board of Directors acting on behalf of the Association, nor the Association as an entity, shall have any right, privilege, power nor standing to proceed on any cause of action, claim or demand arising from or related to any property, real, personal or intangible, unless such property is owned and titled to the Association and the Association shall have no right, title, power or privilege to act on behalf of any other person, including Owners, derivatively or otherwise, in respect to any other property not owned and titled



**Section 3.18. Management Agent.** The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year .

**Section 3.19. Borrowing.** The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement of the Common Property and facilities without the approval of the members of the Association; the Board shall also be authorized to borrow money for other purposes; provided, however, the Board shall obtain membership approval in the same manner as provided in Article 7 of the Declaration for special assessments if the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Property.

**Section 3.20. Liability and Indemnification of Officers and Directors.** The Association shall indemnify every officer and director, and the Declarant, against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director or the Declarant in connection with any action, suit, or other proceedings to which such officer or director may be a party be reason of being or having been an officer, director or otherwise acted in accordance with the terms hereof or on behalf of the Association hereunder. Neither the officers and directors nor Declarant shall not be liable for any mistake of judgment, negligent or otherwise, except for individual willful misfeasance, malfeasance, misconduct or bad faith. Neither the officers and directors nor Declarant shall have any personal liability with respect to any contract or other commitment made by any of them, in good faith, on behalf of the Association ( except to the extent that such officers and directors or Declarant may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director and Declarant free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director or Declarant, or former officer or director may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 3.21. Nominating Committee.** Pursuant to Section 7 of this Article, there shall be a Nominating Committee composed of three (3) members appointed in the manner and to perform the functions specified in Section 7 of this Article.

**Section 3.22. Other Committees.** There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

**Section 3.23. Service on Committees.** Unless otherwise provided in these By-Laws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Section 4.01. Designation. The principal offices of the Association shall be the President, the Vice President, the Secretary, and the Treasurer. The President and Vice President shall be elected by and from the Board of Directors. The Secretary and Treasurer shall be elected by the Board of Directors, but need not be Board members. The Board of Directors may appoint one or more Assistant Treasurers, Assistant Secretaries, and such other subordinate officers as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be members of the Board of Directors. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office.

Section 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

Section 4.03. Removal of Officers. Upon the affirmative vote of a Majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4.04. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 4.05. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the South Carolina Nonprofit Corporation Code, including, but not limited to, the power to appoint committee from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 4.06. Vice President. The Vice President shall act in the President' absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 4.07. Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under South Carolina law.

Section 4.08. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and

notification duties associated with the above responsibilities to a management agent.

Section 4.09. Other Officers. Other officers may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

Section 4.10. Agreements, Contracts, Deeds, Leases, Etc. All agreements, contract, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) offices or by such other person or persons as may be designate by resolution of the Board of Directors.

## **ARTICLE V.**

### **Rule Making and Enforcement**

Section 5.01. Authority and Enforcement. The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conducts, us, and enjoyment of Lots and the Common Property; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any Occupant of a Lot violates the Declaration, By Laws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and the Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Lot Owner shall pay the fine upon notice of the Association, and the fine shall be an assessment and a lien against the Lot until paid. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter .

Section 5.02. Fining and Suspension Procedures. The Board shall not impose a fine, suspend the right to vote (unless an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association in which case such suspension shall be automatic ), or suspend the right to use the Common Property unless and until notice of the violation is given as provided in subsection 2(a) below:

(a) Notice. If any provision of the Declaration or By-laws or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall state: (i) the nature of the alleged . violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed sanction, or both; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action; and (v) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of receipt of the notice. If a challenge is not made, the sanction shall be effective upon the date of the notice; provided, the Board may, in its discretion, waive any sanction if the violation is cured within ten (10) days from the date of notice. In the event of a continuing violation, each day the violation continues

constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator .

Section 5.03. Additional Enforcement Rules. Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any provisions of the Declaration, the By-laws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and monetary damages or both without the necessity for compliance with the procedure set forth in Section (2) of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided herein for the collection of assessments.

## **ARTICLE VI.**

### **Miscellaneous**

Section 6.01. Notices. Unless otherwise provided in these By-laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) If to an Owner, at the address which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot or Parcel of such Owner;

(b) If to an Occupant, at the address of the Lot occupied; or

(c) If to the Association, the Board of Directors or the managing agent at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 6.02. Severability. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these By-Laws or the Declaration.

Section 6.03. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By Laws or the intent of any provisions thereof.

Section 6.04. Gender and Grammar. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 6.05. Fiscal Year. The fiscal year of the Association may be set by resolution of the Board of Directors. In the absence of such resolution by the Board of Directors, the fiscal year shall be the calendar year.

Section 6.06. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the Owners may, by a Majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant.

Section 6.07. Conflicts. The duties and powers of the Association shall be those set forth in the South Carolina Nonprofit Corporation Code, the Declaration, these By-Laws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the South Carolina Nonprofit Corporation Code, the Declaration, these By-Laws, or the Articles of Incorporation, then the provisions of the South Carolina Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these By-Laws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 6.08. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or By-Laws, in which case such higher vote shall be necessary to amend, these By-Laws may be amended only by the affirmative vote, and written consent of a majority of the members of the Board of Directors of the Association; provided, however, that no amendment to these By-Laws shall be in conflict with the Declaration, and no amendment to these By-Laws shall change, alter or affect any rights or privileges of the Declarant, without the prior written consent of the Declarant. Any amendment duly certified and recorded ( containing any additional signatures required by the Declaration) shall be conclusively presumed to have been duly adopted in accordance with the Declaration and By-Laws.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.



BK V390PG285

DODDS & HENNESSY, L.L.P.  
ATTORNEYS AT LAW

FILED

V390-247

2001 DEC 12 AM 10:51

CHARLIE LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

4400  
A

*Handwritten initials*