



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is executed on this 28th day of July, 2000.

ARTICLE I: CREATION OF THE COMMUNITY

1.1. Purpose and Intent.

The Association, as the owner of the real property more particularly described on Exhibit "A" attached hereto (or, to the extent it is not the owner, then with said owners' consent), intends by recording this Declaration to create a general plan of development for the residential community on Cat Island in Beaufort County, South Carolina, known as Olde Tabby Park. This Declaration provides a flexible and reasonable procedure for the future expansion of Olde Tabby Park to include additional real property as the Association deems appropriate and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising Olde Tabby Park. An integral part of the development plan is the creation of Olde Tabby Park Community Association, Inc. (the "Association"), an association comprised of all owners of real property in Olde Tabby Park, to own, operate, or maintain common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

1.2. Binding Effect.

The property described in Exhibit "A", and any additional property which is made a part of Olde Tabby Park in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Olde Tabby Park, their heirs, successors, successors-in-title, and assigns. This Declaration, as it may be amended and supplemented from time to time, shall remain in effect and shall be enforceable by the Association, any owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 20 years from the date this Declaration is recorded. After such time, this declaration shall be terminated, but

automatically renewed for successive periods of 10 years each, unless an instrument signed by a majority of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder thereof.

1.3. Governing Documents.

The Governing Documents create a general plan of development for Olde Tabby Park. Additional restrictions, or provisions which are more restrictive than the provisions of this Declaration, may be imposed on any portion of Olde Tabby Park, in which case, the more restrictive provisions will be controlling. No Person shall record any additional covenants, conditions, or restrictions affecting any portion of Olde Tabby Park without the association's consent. Owners representing at least 75% of the Association's total votes must consent. Any instrument recorded without the required consent is void and of no force and effect.

All provisions of the Governing Documents shall apply to all Owners and to all occupants of their Units, as well as their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

ARTICLE II: CONCEPTS AND DEFINITIONS

The terms used in the Governing Documents generally shall be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Architectural Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to Article V, as they may be amended.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants.

“Articles of Incorporation” or “Articles”: The Articles of Incorporation for Olde Tabby Park Community Association, Inc., a South Carolina nonprofit corporation.

“Association”: Olde Tabby Park Community association, Inc., a South Carolina nonprofit corporation, its successors or assigns.

“Base Assessment”: Assessments levied on all Units subject to assessment under Article IX to fund Common expenses, as determined in accordance with Section 9.1.

“Board of Directors” or “Board”: The body responsible for administering the Association, selected as provided in the By-Laws and serving the same role as the board of directors under South Carolina corporate law.

“By-Laws”: The By-Laws of Olde Tabby Park Community Association, Inc., attached for informational purposes as Exhibit “D”, as may be amended.

“Common Area”: All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the Owners’ common use and enjoyment.

“Common Expenses”: The actual and estimated expenses the Association incurs, or expects to incur for all Owners’ general benefit, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

“Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing in Olde Tabby Park, or the minimum standards established pursuant to the Architectural Guidelines, Rules and Regulations, and Board resolutions, whichever is the highest standard. The Association shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and desires within Olde Tabby Park change.

“Declaration”: This Declaration of Covenants, Conditions, and Restrictions for Olde Tabby Park, as it may be amended or supplemented from time to time.

“Governing Documents”: A collective term referring to this Declaration, any applicable Supplemental Declaration, the By-Laws, the Articles, the Architectural Guidelines, and the Rules and Regulations, as each may be amended.

“Master Plan”: The land use plan for the development of Olde Tabby Park approved by the Beaufort County (SC) Development Review Team, as it may be amended, which includes all of the property described in Exhibit “A”.

“Member”: A Person subject to membership in the Association pursuant to Section 7.3.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. “Mortgagee” shall refer to a beneficiary or holder of a Mortgage. “First Mortgage” shall be a Recorded mortgage having first priority over all other Mortgages encumbering a Unit, and “First Mortgagee” shall refer to a beneficiary or holder of a First Mortgage.

“Owner”: One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a Recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) shall be considered the Owner.

“Person”: An individual, corporation, partnership, trustee, or any other legal entity.

“Private Amenity”: Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within Olde Tabby Park, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and shall include, without limitation, the golf course, if any, which is so located and all related and supporting facilities and improvements.

“Record,” “Recording,” or “Recorded”: The appropriate recordation or filing of any document in the office of the Beaufort County (SC) Register of Deeds, or such other place which is designated as the official location for recording deeds and similar documents affecting title to real estate. The date of recording shall refer to that time at which a document, map, or plat is recorded.

“Rules and Regulations”: The initial rules and regulations set forth in Exhibit “C”, as they may be supplemented, modified, and repealed pursuant to Article IV.

“Special Assessment”: Assessments levied in accordance with section 9.3.

“Specific assessment”: Assessment levied in accordance with Section 9.4.

“Supplemental Declaration”: A Recorded instrument which subject’s additional property to this Declaration pursuant to Article X, designates Neighborhoods pursuant to Article XI, and/or imposes additional restrictions and obligations on the land described in such instrument.

“Olde Tabby Park or Community”: The real property described in Exhibit “A” together with such additional property as is subjected to this Declaration in accordance with Article X.

“Unit”: A portion of Olde Tabby Park, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached single-family residence. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a parcel of land upon which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by the Association, whichever is more recent.

ARTICLE III: USE, OCCUPANCY AND TRANSFER

3.1. General

Various restrictions on the use, occupancy, and transfer of Units are set forth in this Article. Each Owner, by acceptance of a deed or other instrument granting an interest in any Unit, acknowledges and understands that the use of such Unit is subject to Rules and Regulations and restrictions on occupancy and transfer, as they may be expanded, modified, or otherwise amended in accordance with the procedures set forth in Article XVIII.

3.2 Restrictions on Use.

Olde Tabby Park shall be used only for residential, recreational, and related purposes consistent with the Governing Documents. Notwithstanding the above, home business use ancillary to the primary residential use of a Unit is permitted subject to the Rules and Regulations and, further, as provided in Section 12.1.

3.3. Restrictions on Occupancy.

All occupants of a single Unit shall be members of a single housekeeping unit. The number of occupants in each Unit shall be limited to a reasonable

number based on the Unit's facilities and size and its fair use of the Common Area.

3.4. Restrictions on Transfer; Changes in Ownership of Units.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven day's prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the Board receives such notice, notwithstanding the transfer of title.

ARTICLE IV: CONDUCT

4.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for Olde Tabby Park, a framework of affirmative and negative covenants, easements, and restrictions governing Olde Tabby Park, within which the Board and the Members shall have the ability to respond to problems and changes in circumstances, conditions, needs, trends, and technology which inevitably will affect Olde Tabby Park, its Owners, and residents. Toward that end, this Article establishes procedures for modifying and expanding the initial Rules and Regulations set forth in Exhibit "C".

4.2. Regulation Making Authority.

(a) Board Authority. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt, repeal, and modify regulations governing matters of conduct and aesthetics and the activities of Members, residents, and guests within Old Tabby Park. The Board shall send notice by mail to all Members concerning any such proposed action at least five business days prior to the Board Meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board Meeting prior to such action being taken.

(b) Members' Authority. Alternatively, Members representing more than 50% of the total votes in the Association, at an Association meeting duly called for such purpose, may vote to adopt regulations that modify, cancel, limit, create exceptions to, or expand the Rules and Regulations then in effect.

(c) Notice; Opportunity to Disapprove. Notice of any board resolution or member action adopting, repealing, or modifying regulations shall be sent to all Members at least 30 days prior to the effective date. The resolution or Member action shall become effective on the date specified in the notice unless (i) Members petition for a special meeting, in accordance with the By-Laws, to reconsider such resolution, and (ii) the resolution is disapproved at the meeting by Members representing more than 50% of the total votes in the Association.

(d) Conflicts. Nothing in this Article shall authorize the Board or the Members to modify, repeal, or expand the Architectural Guidelines or other provisions of this Declaration. In the event of a conflict between the Architectural Guidelines and the Rules and Regulations, the Architectural Guidelines shall control.

(e) Common Area Administrative Rules. The procedures required under this section 4.2 shall not apply to the enactment and enforcement of Board resolutions or administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures.

(f) Limitations. Except as may be contained in this Declaration either initially or by amendment or in the initial Rules and Regulations set for the in Exhibit "C" all Rules and Regulations shall comply with the following provisions:

(i) Similar Treatment. Similarly situated Owners shall be treated similarly.

(ii) Signs and Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling. No rules shall regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs (including design criteria) and limit to a reasonable number the number of signs that may be posted. Other signs may be posted in accordance with applicable Board rules and to an extent not inconsistent with the terms of this Declaration, provided that such Owners shall be responsible for removing such signs in a timely manner and shall be subject to enforcement actions for failing to do so.

(iii) Household Composition. No rule established pursuant to this article shall interfere with the Owners freedom to determine the composition of their households. Section 3.3 shall govern restrictions on occupancy.

(iv) Activities Within Dwellings. No rule established pursuant to this Article shall interfere with the activities carried on within the confines of dwellings, except that the Association may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excessive noise, parking congestion or traffic, that create unsightly conditions visible outside the dwelling or that create an unreasonable source of annoyance.

(v) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the governing documents. This provision does not affect the right to increase the amount of assessments as provided in Article IX.

(vi) Alienation. No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; however, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease of any Unit greater than an amount reasonable based on the costs to the Association of administering that lease.

(vii) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule and which was in compliance with all rules previously in force. This dispensation shall apply only for the duration of such Owner's ownership of the Unit personally, and this right shall not run with title to any Unit.

The limitations in subsections (i) through (vii) of this subsection 4.2 (f) shall limit only regulation making authority exercised under Section 4.2.

4.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners and prospective purchasers are given notice that use of their Units and the Common Area is limited by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Unit can be affected by this provision, that the Rules and Regulations may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded instrument. All purchasers of

Units are on notice that the Association may have adopted changes to the Rules and Regulations. The Association shall provide a copy of the current Rules and Regulations to any Member or Mortgagee upon request and payment of the reasonable cost of such copy.

ARTICLE V: ARCHITECTURE AND LANDSCAPING

5.1. General.

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on such Unit, except pursuant to approval in compliance with this Article and the Architectural Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, modifications to the interior of a Unit visible from outside the structure shall be subject to approval.

Any improvements constructed on a Unit (and appurtenances thereto, such as mailboxes) shall be designed by and built in accordance with the plans and specifications of a licensed architect and must be approved by the Architectural Review Committee. It is expressly understood that the ARC shall also have the right to require that the Owner plant, at the Owner's cost, specimen trees on the Unit in places adjacent to the right-of-way.

5.2. Architectural Review.

(a) Architectural Review Committee. The Association, acting through an Architectural Review Committee appointed by the Board (the "ARC"), shall assume jurisdiction over architectural matters. The ARC shall consist of at least three, but not more than seven, Persons who shall serve and may be removed and replaced in the Board's discretion. The ARC members need not be Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time.

(b) Reviewer. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the “Reviewer”.

(c) Fees; Assistance. The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

5.3. Guidelines and Procedures.

(a) Architectural Guidelines. The ARC may prepare Architectural Guidelines applicable to Units, which may contain general provisions applicable to all Units, as well as specific provisions, which vary among the Units according to location, use, or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder. The architectural Guidelines are not the exclusive basis for the Reviewer’s decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application.

The ARC shall have the authority to amend the Architectural Guidelines with the Board’s consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable notice during the Association’s business hours. In the ARC’s discretion, such Architectural Guidelines may be recorded, in which event the Recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures. Except as the Architectural Guidelines otherwise specifically provide, no activity described in Section 5.1 shall commence on any Unit until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as

applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as deemed necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures described in this Article.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

In any event, the Reviewer shall notify the applicant in writing of a final determination within 45 days after its receipt of a completed application and all required information. In the event that the Reviewer fails to respond in a timely manner, approval shall be assumed. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Reviewer has granted a variance pursuant to Section 5.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed in place at the time of delivery to the applicant.

If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed

within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association or any aggrieved Member.

The Reviewer may be resolution exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

5.4 No Waiver of Future Approvals.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans or other matters subsequently or additionally submitted for approval.

5.5 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with the rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) stop the Reviewer from denying a variance in other circumstances. For purposes hereof, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

5.6 Limitation of Liability.

The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental

requirements, (c) that Units are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Units or the Area of Common Responsibility are protected, or (e) that no defects exist in approved construction.

The Association, the board, any committee, or any member thereof shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the ARC, and any members thereof as provided in Section 8.7.

5.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that such Owner's Unit has no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall stop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

5.8. View Impairment.

The Association does not guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

ARTICLE VI: MAINTENANCE AND REPAIR

6.1 Maintenance of Units.

Each Owner shall maintain his or her Unit and all landscaping, irrigation systems, and other improvements comprising the Unit in a manner consistent

with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless the Association assumes such maintenance responsibility pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

Except as provided in a Supplemental Declaration, each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or right-of-way within 10 feet of the Unit boundary; however, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article V.

6.2. Responsibility for Repair and Replacement.

Unless the Governing Documents or other instruments creating and assigning maintenance responsibility specifically provide otherwise, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner pursuant to Section 9.3.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct such structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article V. Alternatively, the Owner shall clear the damaged portions of the Unit and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that are not covered by insurance proceeds.

ARTICLE VII: THE ASSOCIATION AND ITS MEMBERS

7.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association is also the primary entity responsible for enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and South Carolina law.

7.2. Board of Directors.

The Board shall govern the Association as more particularly described in the By-Laws. Except as to matters specifically requiring Members' approval as set forth in the Governing Documents, the Board may exercise all rights and powers granted to the Association without membership approval.

7.3. Membership.

(a) Qualification. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 7.3 (b) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners under this declaration and the other Governing Documents. The membership rights of an Owner that is not an individual may be exercised by any officer, director, partner, member, manager of a limited liability company, trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

(b) Voting. As to all matters with respect to which Members are given the right to vote under the Governing documents, each Member shall be entitled to one vote for each Unit he or she owns. No vote shall be exercised for any property which is exempt from assessment under Section 9.9.

In any situation where a Member is entitled to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(c) Transfer of Membership. Membership in the Association is appurtenant to Unit ownership and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon a transfer of title to such Unit, and then only to the transferee. Any prohibited transfer of an Association

membership shall be void and of no force or effect. Any transfer of title or interest to a Unit shall operate automatically to transfer the appurtenant membership rights in the Association to the new Owner. Prior to any transfer of title to such a Unit, the transferring Owner shall give seven days prior written notice to the board of such transfer, which shall include the name and address of the acquiring Owner and the date of transfer.

ARTICLE VII: ASSOCIATION POWERS AND RESPONSIBILITIES

8.1. Acceptance and Control of Association Property.

(a) The Association may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 15.7 and 16.3.

(b) The Association shall be responsible for management, operation, and control of the Common area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area, as it deems appropriate.

8.2. Maintenance of Area of Common Responsibility.

The association shall maintain, in accordance with the Community-Wide Standard, the area of Common Responsibility, which shall include, but need not be limited to:

(a) all portions of and structures situated on the Common Area, including but not limited to the private streets and gates serving Olde Tabby Park;

(b) landscaping within public rights-of-way within or abutting Olde Tabby Park;

(c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract, covenant, or agreement for maintenance thereof entered into by, or for the benefit of, the Association;

(d) all lakes, ponds, streams, or wetlands located within Olde Tabby Park which serve as part of the storm water drainage system, and improvements and equipment installed therein or used in connection therewith;

(e) any part of the irrigation system for Olde Tabby Park, and all improvements and equipment used in connection therewith, including irrigation ditches, head gates, and siphons.

The Association may maintain other property which it does not own, including, without limitation, publicly-owned property, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association does not guarantee that drainage will flow off the Area of Common Responsibility on the intended drainage course. The Association shall not bear any responsibility for ensuring that drainage follows intended drainage patterns off of the Area of Common responsibility.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing at least 75% of the votes in the Association agree in writing to discontinue each operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this declaration.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof.

8.3. Insurance.

(a) Required Coverages. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) blanket property insurance for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless

of ownership. All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes. The Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Association under any such policies and shall have full power to receive and to deal with such proceeds. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, except as otherwise provided in this Section:

(ii) commercial general liability insurance on the Area of Common Responsibility. Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Area of Common Responsibility. The Board shall use its business judgment in deciding upon per occurrence limits for such coverage, and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insureds, any property manager, the Association, the board, the ARC, and their respective representatives, members, agents, and employees with respect to any liability arising out of the maintenance or use of the Area of Common Responsibility;

(iii) workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

(iv) directors' and officers' liability coverage;

(v) commercial crime insurance, including fidelity insurance covering all Persons responsible for handling association funds in an amount determined in the Board's business judgment, but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall include such premiums in the assessments it levies. The Board shall review the limits of all Association insurance policies at least once a year and shall adjust the policy limits, as the Board deems necessary or appropriate.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with replacement costs in the Beaufort County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and upon request, to each Member insured.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner (s) and their Units as a Specific Assessment pursuant to Section 9.3.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in South Carolina which satisfies the requirements of the Federal National Mortgage association, or such other secondary mortgage market agencies or federal agencies as the board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association or interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the common Area other than that of a Member);

(vii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more Owners, or on account of any curable

defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(viii) include an endorsement precluding the insurer from denying a claim by an Owner or conditioning recovery under the policy based upon or due to the negligent acts or omissions of the Association or any other Owner.

(c) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds for claims arising in connection with the ownership, existence, use, or management of the Common Area and provide:

(i) a waiver of subrogation as to any claims against the Association's board of directors, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and

(iii) an endorsement requiring at least 30 days' prior written notice to the association of any cancellation, substantial modification, or non-renewal.

8.4 Repair and Reconstruction of Association Property.

The Association shall have the authority and the duty to repair or reconstruct Common Area or other property which the Association is obligated to insure ("Insured Property") that is damaged or destroyed unless such repair or reconstruction would be illegal under any state or local ordinance governing health or safety, or Members representing 75% of the total vote of the Association vote not to repair or reconstruct.

Except as otherwise provided in this Section the board diligently shall pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Association may take all necessary or appropriate action to affect such repair or reconstruction. Such repair or reconstruction shall be in accordance with the original plans and specifications unless other plans are approved by a vote of Members representing at least 51% of the total vote of the Association and the Reviewer pursuant to Article V.

The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of Insured Property. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board, pursuant to Section 9.3, may levy in advance a

Special Assessment to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article IX.

Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Article IX constitute a fund for the payment for costs of repair or reconstruction after casualty. If a balance exists after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners of the Units in proportion to the contributions made by each Owner to the Association.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The cost of removal and landscaping shall be paid for with insurance proceeds. The Association shall retain the remaining proceeds in its general or other funds or shall allocate or distribute such funds as the Board determines appropriate, provided any such distribution of insurance proceeds shall be proportionate to the Members' interests.

8.5. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violating the Governing Documents after notice and an opportunity for a hearing. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of an Owner violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; however, if the violator does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote;

(iii) suspending any services the Association provides to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(iv) exercising self-help or taking action to abate any violation of the Governing documents in a non-emergency situation;

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit that violates Article V and to restore the Unit to its previous condition and, upon the Owner's failure to do so, the Board or its designee shall have the right to enter the property, remove the violation, restore the property to substantially the same condition as previously existed, and levy a Specific Assessment against the Owner's Unit in accordance with Section 9.4. Any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article V and the Architectural Guidelines from continuing or performing any further activities in the Community; and

(viii) levying a Specific Assessment against an Owner in the manner provided in Section 9.4 to collect any costs the Association incurs in curing any violation, plus a reasonable administrative fee to discourage noncompliance, or to collect any fine that remains unpaid for a period of 10 days or more. In addition, the Board may take the following enforcement procedures to ensure Compliance with the Governing Documents: exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs the Association incurs against the Unit and the Owner as a Specific Assessment pursuant to Section 9.3. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or

capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable county ordinances and Beaufort County may enforce its ordinances within the Community.

8.6. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from the Governing Documents, or reasonably necessary to effectuate any such right or privilege.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

8.7. Indemnification of Officers, Directors and Others.

Subject to South Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including

attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party.

8.8. Security.

The Association may, but shall not be obligated to, maintain certain activities, structures, or devices within Olde Tabby Park designed to make it safer. The Association shall not in any way be considered insurers or guarantors of security within Olde Tabby Park, nor shall the Association be held liable for any loss or damage by reason of failure to provide adequate security within Olde Tabby Park, nor shall the Association be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Olde Tabby Park (e.g., a gated entry, guard house, etc.) cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Unit that the Association, its board, and committees are not insurers of safety within Olde Tabby Park and that each Person using Olde Tabby Park assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

8.9. Provision of Services.

The Association may provide or provide for services and facilities for the Members, their guests, lessees, and invitees, and shall be authorized to enter into and terminate contracts or agreements with other entities to provide such services and facilities. The Board may charge use and consumption fees for such services and facilities. By way of example, some services and facilities which might be offered include landscape maintenance, snow removal, pest control service, cable television service, security, caretaker services, transportation, fire protection, utilities, including access to fiber optics networks, and similar services and facilities. Nothing herein shall be construed as a representation by the Association as to what, if any, services shall be provided. In addition, the Board, in its discretion, shall be permitted to modify or cancel existing services provided, unless otherwise required by the governing Documents. No Owner shall be exempt from the obligation to pay for such services, if provided to all Owners as a Common Expense, based upon non-use or any other reason.

8.10. Relations with other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to address issues of an area-wide concern. Examples of issues which may be addressed include road and right-of-way maintenance, drainage issues, open space, and to contribute funds for, among other things, shared or mutually beneficial property or services or a higher level of Common Area maintenance.

ARTICLE IX: ASSOCIATION FINANCES

9.1. Budgeting and Allocating Common Expenses.

Assessments for Common Expenses shall be levied at least annually in accordance with this Article.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The budget shall include any contributions to be made to a reserve fund for repair

and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 9.4.

The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under Section 9.4 to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a summary of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner within 30 days of adoption of the proposed budget and at least 30 days prior to the effective date of such budget. The notice shall set a date for a meeting of the Members to consider the budget, which shall be not less than 14 nor more than 30 days after mailing of the summary. The budget automatically shall become effective unless Members representing at least 75% of the votes in the Association disapprove such budget at a meeting.

If Members disapprove any proposed budget or the Board fails for any reason to determine the budget for any year, then the budget more recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

9.2. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least 51% of the total votes allocated to units subject to such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in

installments extending beyond the fiscal year in which the Special Assessment is approved.

9.3. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 8.9). The Association may levy Specific Assessments for special services in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

9.4. Authority to Assess Owners; Time of Payment

The Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit, on the first day of the month following the sale of a Unit and the issuance of a certificate of occupancy for a residential dwelling on such Unit. The first annual Base Assessment levied on each Unit, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board provides otherwise, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

9.5. Personal Obligation for Assessments.

Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of South Carolina law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be each Owner's personal obligation, and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9.6. Statement of Account.

Upon written request of any Member, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting Person personally or by certified mail, first-class postage prepaid, return receipt requested. The Association may require the payment of a reasonable processing fee for issuance of such statement.

Such statement shall bind the Association in favor of Persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all

unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquired its interest after requesting such statement.

9.7. Lien for Assessments.

Subject to the limitations of any other applicable provisions of South Carolina law, the Association shall have a statutory lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges and costs of collection (including attorneys' fees). Such lien shall be perfected upon the Recordation of this Declaration.

Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; (b) the lien or charge of any Recorded First Mortgage made in good faith and for value; and (c) labor or material-men's liens, to the extent required by law.

Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of Mortgages under South Carolina law. All such costs and expenses of any such foreclosure shall be secured by the lien being foreclosed.

The Association may bid for the Unit, as applicable, at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged; in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had the Association not acquired it. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the First Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure, except as otherwise provided in this Section. Uncollected assessments shall be deemed Common Expenses collectible from Owners of all Units subject to assessment under Section 9.4, including such acquirer, its successors, and assigns. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 9.4, including such acquirer, its successors, and assigns.

9.8. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Specific Assessments, and Special Assessments:

(a) all Common Area and such portions of the property included in the Area of Common Responsibility; and

(b) any property dedicated to and accepted by any governmental authority or public utility.

9.9. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

9.10. Transfer Fee.

(a) Authority. The Board shall have the authority to establish and collect a "Transfer Fee" from the transferring Owner upon each transfer of title to a Unit in the Community, which fee shall be payable to the Association at the closing of the transfer and shall be secured by the Association's lien for assessments under Section 9.7. A transferring Owner shall notify the Association's secretary of a pending title transfer at least seven days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information as may be required by the Board.

(b) Fee Limit. The Board shall have the sole discretion to determine the amount and method of determining any such Transfer Fee. The Board is authorized, but is not required, to determine the resale assessment based upon a sliding scale which varies in accordance with the "gross selling price" of the property or any other factor the Board determines. However, in no event shall any such resale assessment exceed 0.25% of the gross selling price of the Unit. For the purpose of determining the amount of the resale assessment, the gross selling price shall be the total cost to the purchaser of the Unit, excluding taxes

and title fees as shown by the amount of tax imposed by Beaufort County, South Carolina.

(c) Purpose. All Transfer Fees that the Association collects shall be deposited into a segregated account used for the maintenance of Common Area and roads within and adjacent to the Community.

(d) Exempt Transfers. Notwithstanding the above, no Transfer Fee shall be levied upon transfer of title to a Unit:

(i) by an owner purchasing the Unit from a builder who held title solely for the purpose of development and resale;

(ii) by a builder who held title solely for purposes of development and resale;

(iii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse, or child upon the death of the Owner;

(v) to an entity in which the grantor has at least a 51% ownership interest; provided, upon any subsequent transfer of an ownership interest in such entity, the resale assessment shall become due;

(vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

ARTICLE X: EXPANSION OF COMMUNITY

10.1. Expansion by the Association.

The Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property and an affirmative vote of Members representing 67% of the total votes in the Association. The Association shall subject such property by Recording a Supplemental Declaration describing the property being subjected. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the owner of the subjected property. Any such subjection of property shall be effective upon Recording unless otherwise provided therein.

10.2. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless such Supplemental Declaration specifies otherwise. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

ARTICLE XI: EASEMENTS

11.1. Easements in Common Area.

The Association grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying an interest in such property to the Association;
- (c) The Board's right to:
 - (i) adopt and enforce rules regulating use and enjoyment of the Common Area;
 - (ii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - (iii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in this Declaration; and

Any Owner may extend the Owner's right of use to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2. Easements of Encroachment.

The Association grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit

and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements To Serve Additional Property.

The Association hereby reserves, so long as it owns any property described in Exhibit "A", for itself and its duly authorized agents, successors, assigns, and mortgagees and their agents, employees, designees, invitees, and guests, an easement over the Common Area for the purposes of enjoyment, use, access, and development of property located adjacent to Common Area and owned by the Association, its successors, or assigns, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

11.4. Easements for Maintenance, Emergency, and Enforcement.

The Association shall have a right of entry upon and easement of access through every Unit, but not through a structure, for the purpose of maintaining any property or improvement for which the Association has maintenance responsibility. The Association also shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in any emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.5. Easements for Wetland Maintenance and Flood Water.

The Association and its successors, assigns, and designees have the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures

and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Association and their successors, assigns, and designees shall have an access easement over and across any of Olde Tabby Park abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

The Association further reserves for itself, its successors, assigns, and designees, so long as the Association owns any property described in Exhibit "A", a nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water and wetlands within Olde Tabby Park, in order to (a) temporarily flood and back water upon and maintain water over such portions of Olde Tabby Park; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

No Person shall exercise an easement pursuant to this Section in violation of, or for any purpose that violates local, state, or federal laws or regulations.

11.6. Easements for Irrigation System.

The Association and its successors, assigns, and designees, reserves for itself the nonexclusive right and easement, but not the obligation, to enter upon every Unit and the Common Area to install, operate, maintain, and replace irrigation systems or portions thereof, including irrigation ditches, head gates, and siphons. The Association, and their successors, assigns, and designees shall have an access easement over and across any of Olde Tabby Park abutting or containing irrigation systems to the extent reasonably necessary to exercise their rights under this Section. Notwithstanding the above, Unit Owners are responsible for maintaining irrigation systems exclusively serving their Unit.

11.7. Easements for Golf Course.

Every Unit and the Common Area are burdened with an easement permitting golf balls unintentionally to come upon such areas, and for golfers at reasonable times and in a reasonable manner to come upon the Common Area or the exterior portions of a Unit to retrieve errant golf balls. The existence of this

easement shall not relieve golfer of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from the exercise of this easement: the Association or its Members (in their capacities as such); the owner of the golf course, its successors, successors-in-title, and assigns; any builder or contractor (in their capacity as such); any officer, director, or partner of any of the foregoing, or any officer or director of any partner.

The owner of any golf course within or adjacent to any portion of the Community, its agents, successors, and assigns, shall at all times have a right and non-exclusive easement of access and use over every Unit, but not through a structure, reasonably necessary to the operation, maintenance, repair, and replacement of its golf course.

Any portion of the Community immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water for the irrigation system serving such golf course. Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement. The owner of any golf course within or adjacent to any portion of the Community, its successors and assigns, shall have a perpetual, exclusive easement of access over the Community as necessary to retrieve golf balls from bodies of water within the Common Area lying reasonably within range of golf balls hit from its golf course. The easements established herein may be amended unilaterally by the Association if such amendment is necessary to bring any provision hereof into compliance with the restrictive covenants applicable to said golf courses.

11.8. Easement for Use of Private Streets.

The Association hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the private streets within the Community for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage collection service to the Community; however, such easement shall not authorize any such Persons to enter the Community except while acting in their official capacities. The existence of this easement shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Community, provided that the Association at all times maintains systems and/or procedures to permit the uncontested entry of Persons authorized to exercise the easements granted in this Section without unreasonable interference or delay.

ARTICLE XII: DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

12.1. Consensus for Association Litigation.

Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of Members representing at least 75% of the total votes of the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

12.2. Alternative Method for Resolving Disputes.

The Association, its officers, directors, and committee members, all Persons subject to this Declaration, any builder within Olde Tabby Park, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving Olde Tabby Park, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Sections 12.3 ("Claims") using the procedures set forth in Section 12.4.

12.3. Claims.

Unless exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing documents or relating to the design or construction of improvements on Olde Tabby Park (other than matters of aesthetic judgment under Article IV, which shall not be subject to review) shall be subject to the provisions of Sections 12.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 12.4:

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

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III; Article IV, and Article V;

(c) any suit between Owners, not including the Association as a party, that asserts a Claim constituting a cause of action independent of the Governing Documents;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 12.4 (a) unless the party or parties against who the claim is made agree to toll the statute of limitations as to such claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.4.

12.4. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) Claimant's proposed remedy; and

(iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. If requested in

writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have 30 additional days to submit the claim to mediation under an independent agency providing dispute resolution services in Beaufort County or surrounding areas.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; however, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within five days of the Termination of Mediation, the Claimant shall make a final written demand (“Settlement Demand”) to the Respondent, and the Respondent shall make a final written settlement offer (“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants’ original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

(c) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with such rules of arbitration as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; however, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This subsection (c) is an agreement to arbitrate and is specifically enforceable under any applicable arbitration laws of the State of South Carolina. The arbitration award (“Award”) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the state of South Carolina.

12.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 12.5 (b), each Party shall bare its own costs, including attorney’s fees, and share equally charges rendered by the mediator(s) and all costs of conducting the arbitration proceeding (“Post Mediation Costs”).

(b) Any award which is equal to or more favorable to Claimant than Claimant’s Settlement Demand shall add Claimant’s Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any award which is equal to or less favorable to Claimant than any Respondents’ Settlement Offer shall award such respondent its Post Mediation Costs.

12.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 12.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in section 12.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including attorney’s fees and court costs.

ARTICLE XIII: PRIVATE AMENITIES

13.1. General.

Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right in their sole discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without

limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights, subject to the terms of any written agreements with their respective members.

13.2. Conveyance of Private Amenities.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Association, any builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. The ownership or operation of the Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator, or (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity. Consent of the Association or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

13.3. Shared Costs.

In consideration of the fact that the Private Amenity will benefit from maintenance of the roads, rights-of-way, and Common areas within Olde Tabby Park, the Association may enter into a contractual arrangement or covenant to share costs with any Private Amenity obligating the Private Amenity to contribute funds for, among other things, shared property or services and/or a higher level of Common area maintenance.

ARTICLE XIV: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, and guarantors of First Mortgages on Units in Olde Tabby Park. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

14.1. Notices of Action.

An institutional holder, insurer, or guarantor of a First Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), shall be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of Olde Tabby Park or which affects any Unit on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days;

(c) any lapse, cancellation, or material modification of any insurance policy the Association maintains; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2. Other Provisions for First Lien Holders.

To the extent not inconsistent with South Carolina law:

(a) any restoration or repair of Olde Tabby Park after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless Eligible Holders representing at least 50% of the votes of Units subject to Mortgages held by Eligible Holders elect otherwise; and

(b) termination of the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible holders representing at least 50% of the votes of Units subject to Mortgages held by Eligible Holders.

14.3. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee

of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.4. Notice to Association.

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

14.5. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

14.6. Construction of Article XIV.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or South Carolina law for any of the acts set out in this Article.

ARTICLE XV: CHANGES IN COMMON AREA

15.1. Condemnation.

If a Unit or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Area shall be evenly allocated. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining Common Area to the extent available, unless within 60 days after such taking Members representing at least 75% of

the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 8.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

15.2. Transfer, Partition, or Encumbrance of Common Area.

(a) Except as this Declaration otherwise specifically provides, the Common Area shall not be judicially partitioned or subdivided into Units, nor shall the ownership of the Common Area be otherwise divided or encumbered in any manner after conveyance to the Association, except upon the approval of Members representing at least 80% of the total votes in the Association.

(b) The Association shall have the authority, subject to approval of Members representing a majority of the total votes in the Association, to transfer portions of the Common area and improvements thereon to appropriate governmental entities or tax-exempt organizations for the maintenance, operation, and preservation thereof; provided, that any such transfer shall not relieve such Common Area from the rights and benefits of the Association and the Members as provided in this Declaration and shall otherwise be subject to the provisions of this Declaration.

ARTICLE XVI: Amendment.

16.1. Amendment.

This Declaration may be amended unilaterally at any time by the board (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on Units subject to this

Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, that no such amendment shall render title to any Unit unmarketable.

In addition, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds of the Units.

16.2. Validity and Effective Date of Amendment.

If an Owner consents to any amendment to this Declaration or the By-Laws, it shall be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party shall affect the validity of such amendment.

Any amendment shall become effective upon Recording, unless it specifies a later effective date. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

16.3. Exhibits.

Exhibit "A" attached to this Declaration is incorporated by this reference and amendment of such exhibit shall be governed by this Article. Exhibit "C" is incorporated by this reference and may be amended in accordance with Article IV or this Article. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, Declarant has affixed its Hand and Seal this _____ day of July, 2000,

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

SCN Group, L.L.C.

By: _____
Ken L. Willis
Its Authorized Member

By: _____

recorded at the office of the Register of Deeds for Beaufort County on November 29, 1999, in Plat Bok 72 at Page 82, the real property being hereby subjected to the within covenants being the lots (numbered 1 through 25 and 71 through 87), the rights-of-way (National Boulevard, East National Boulevard and West National Boulevard), and all other real property shown on the Phase I Plat.