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**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
THE TOWNHOMES AT BERWICK GREEN**

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AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE TOWNHOMES AT BERWICK GREEN

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE TOWNHOMES AT BERWICK GREEN is made this 28<sup>th</sup> day of December, 2005, by BERWICK GREEN COMPANY, L.L.C., a South Carolina limited liability company (the "Declarant").

WHEREAS, the Declarant filed that certain Declaration of Covenants, Conditions, and Restrictions for The Townhomes at Berwick Green (including any amendments thereto, the "Prior Declaration"), in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1242 at Page 1426.

WHEREAS, pursuant to the terms of Article XI, Section 11.2 of the Prior Declaration, Declarant may, during the period in which Declarant retains the right to appoint and remove any directors and officers of the Association, amend the Prior Declaration by an instrument in writing filed and recorded in the records of the Office of the Register of Deeds for Beaufort County, South Carolina.

WHEREAS, Declarant now desires by this instrument and in accordance with the authority granted Declarant by the Prior Declaration to amend and restate the provisions of the Prior Declaration.

NOW THEREFORE, pursuant to the powers retained by Declarant under the Prior Declaration, Declarant does hereby amend and restate the Prior Declaration in its entirety.

ARTICLE I

DEFINITIONS

1.1 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Additional Property" shall mean and refer to the real property described in Exhibit "B" and all improvements thereon.

(b) "Architectural Standards Committee" shall mean and refer to the committee appointed pursuant to the Master Covenants.

(c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Townhomes at Berwick Green Owners' Association, Inc. as amended from time to time.



(d) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(e) "Association" shall mean and refer to The Townhomes at Berwick Green Owners' Association, Inc., a South Carolina non-profit corporation to be established by the Declarant.

(f) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(g) "By-Laws" shall mean and refer to the By-Laws of the Association which govern the administration and operation of the Association, as the same may be amended from time to time.

(h) "Common Area(s)" shall mean and refer to all real and personal property now or hereafter designated in writing by the Declarant as Common Areas and conveyed to the Association or designated as such and held by the Declarant for the benefit of the Association.

(i) "Common Expense(s)" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(j) "Declarant" shall mean and refer to Berwick Green Company, L.L.C., a South Carolina limited liability company with its principal place of business located at Hilton Head Island, Beaufort County, South Carolina, and its successors and assigns with respect to the Property and the Additional Property at the time of such transfer to said successor in title, or any party who acquires Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to foreclosure of a Mortgage encumbering Declarant's interest in the Property and the Additional Property; or any party receiving an assignment of the rights of the Declarant hereunder.

(k) "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Townhomes at Berwick Green and all amendments thereof filed for record in the Office of the Register of Deeds for Beaufort County, South Carolina.

(l) "Development", with an initial capital letter, shall mean and refer to the Property and all improvements located or constructed thereon.

(m) "Dwelling", with an initial capital letter, shall mean and refer to any improved property located within the Development intended for use as a Townhome.

(n) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

(o) "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a single Dwelling shall be constructed thereon. Upon completion, such Lot and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

(p) "Master Association" shall mean the Indigo Run Property Owners Association, Inc., a South Carolina not-for-profit corporation.

(q) "Master Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for Indigo Run and all amendments thereof filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

(r) "Member" shall refer to the members of The Townhomes at Berwick Green Owners' Association and shall mean the Person, or if more than one, all Persons collectively who constitute the Owner of a Lot or Dwelling.

(s) "Mortgage" shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot or Dwelling.

(t) "Mortgagee" shall mean and refer to the holder of a Mortgage.

(u) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling within the Development.

(v) "Owner" shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling excluding, however, those persons having such an interest under a Mortgage. In the event that there is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, any installment land sales contract covering any Lot or Dwelling, the Owner shall be the purchaser under the contract and not the fee simple title holder. An installment land sales contract shall be an instrument whereby the purchaser is required to make payment for a Lot or Dwelling for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to such Lot or Dwelling until all such payments are made, although the purchaser is given use of such Lot or Dwelling.

(w) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity.

(x) "Property", with an initial capital letter, shall mean and refer to those tracts or parcels of land described on Exhibit "A", together with all improvements thereon and

subsequently constructed thereon, and, upon the submission to the provisions of this Declaration, the tracts or parcels of land described in Exhibit "B", or any portion thereof.

(y) "Townhome" shall mean a dwelling unit used for residential purposes with at least one (1) wall located on a boundary line of the Lot upon which it has been constructed.

## ARTICLE II

### PLAN OF DEVELOPMENT

2.1 Plans of Development of Property. The Property initially shall consist of the property described on Exhibit "A" attached hereto. The Property shall include certain improvements to the Common Areas, as well as, utility systems, drainage systems serving the Lots to the extent the same are, from time to time, installed and existing and submitted to the provisions hereof. The Property shall be subject to the covenants, easements, and restrictions set forth in this Declaration and the Master Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant: (1) owns any portion of the Common Areas; or (2) owns any Lot or Dwelling primarily for the purpose of sale of the Lot or Dwelling; or (3) has the option to add the Additional Property or any portion thereof to the Development, to make improvements and changes to the Common Areas and to all Lots or Dwellings or any other property owned by Declarant, for: (a) installation and maintenance of any improvements in and to the Common Areas; (b) making changes in the location of the boundaries of any Lots or Dwellings owned by Declarant or of the Common Areas; and (c) installation and maintenance of any water, sewer and other utility systems and facilities.

2.2 Plan of Development of Additional Property. Declarant hereby reserves the option, in its sole discretion, to submit from time to time the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. The Declarant reserves the right to plan, design, construct, maintain, and manage the Common Areas, the Additional Property and any unsold Lots as the Declarant deems necessary or convenient for its purposes (except as otherwise expressly prescribed in this Declaration) including without limitation the right to expand or contract the number, size, and density of the unsold Lots, and enlarge the Common Areas and the Additional Property. This option may be exercised by Declarant in accordance with following rights, conditions and limitations, which are the only conditions and limitations on such option, to add all or any portion of the Additional Property to the Development:

2.2.1 Portions of the Additional Property may be added to the Development at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be added to the property;

2.2.2 Exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

2.2.3 If the Additional Property or any portion thereof is added to the Development, any Lots developed therein and any Dwellings constructed thereon shall be subject to the standards and restrictions set forth herein. Declarant reserves the right to designate and restrict the boundaries of the Lots, as well as the Common Areas, if any, to be added to the Development in connection therewith; and

2.2.4 The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the Development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Development or to construct thereon any improvements of any nature whatsoever or to restrict or limit its use in any manner.

The option reserved under this Section 2.2 may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the Office of the Register of Deeds for Beaufort County, South Carolina, legally describing the Additional Property or such portion or portions thereof as are being added to the Development by such amendment. Thereafter, at its discretion, Declarant may convey to the Association the Common Areas designated by Declarant or any other Property owned by the Declarant contained within the Additional Property. Any such conveyances to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property, the Additional Property, or both, and any exceptions which would be disclosed by a survey or physical inspection of such parcel(s).

Any such amendment shall expressly subject the Additional Property or such portion of it to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as embracing the real property described in Exhibit "A" and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements thereon. If the Additional Property or any portion or portions of it is added to the Development, the number of votes in the Association shall be modified to include the Lots to be located on the Additional Property or such portion or portions of it as are added, so that there shall continue to be one (1) vote in the Association per Lot in the Development, and the total number of votes in the Association shall be increased by the number of Lots so added. If the Additional Property or any portion or portions thereof is added to the Development, the Declarant reserves the right to impose additional covenants, conditions, and restrictions on the Lots, Dwellings, Common Areas, or any other property within the Additional Property which shall be in addition to but not in abrogation or substitution of those imposed by this Declaration.

2.3 Lots or Dwellings. If the Additional Property or any portion thereof is added to the Development, all Dwellings and other improvements constructed thereon will be substantially consistent in architectural style of appearance to those Dwellings and improvements located elsewhere within the Development.

2.4 Interest Subject to Plan of Development. Every purchaser of a Lot shall purchase such Lot and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as set forth herein, and Declarant shall have and does hereby specifically reserve the right to add the

Additional Property or any portion or portions thereof to the Development as hereinabove provided, and, with respect to each Lot or other Property located within the Additional Property, to convey to the purchaser thereof the title to the Lot or other Property and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

## ARTICLE III

### PROPERTY RIGHTS

3.1 Owners of Lots or Dwellings. Each Lot and Dwelling shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot or Dwelling including any walls located thereon, subject to the provisions of this Declaration. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services or for the provision of support to a Lot or Dwelling lie partially within and partially outside of the designated boundaries of the Lot or Dwelling, any portions thereof which serve only such Lot or Dwelling shall be deemed to be a part of such Lot or Dwelling and any portions thereof which serve more than one Lot or Dwelling or any portion of the Common Areas, shall be deemed a part of the Common Areas. The ownership of each Lot and Dwelling shall include membership in the Association. Each Owner shall automatically become a Member of the Association and shall remain a Member until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to the successor-in-title to his Lot or Dwelling. Lots shall not be subdivided without the consent of at least a majority of the Owners and of Declarant, so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

3.2 Owner's Easements of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Areas, and such easement to be appurtenant to and pass with title to each Lot and Dwelling, subject to the following provisions:

3.2.1 The right of the Association to borrow money (i) for the purpose of improving the Development, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.2 hereof, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or



established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

3.2.2 The rights and easements reserved to Declarant in Sections 3.3, 3.4, 3.5, 3.7, 3.8, 3.9, 3.10 and 3.11 hereof.

3.2.3 The right of the Association to grant and accept easements as provided in Section 3.5 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, governmental authority, body politic, public service district, public or private utility, or other person, provided that any such transfer of the simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

3.2.4 The rights and easements reserved in Section 3.6 hereof for the benefit of the Association, its Directors, officers, agents, and employees.

3.2.5 The rights and easements reserved in Section 3.8 hereof for the benefit of the Additional Property.

3.3 Easements for Declarant. During the period that Declarant owns any Common Area, or owns any Lot or Dwelling primarily for the purpose of sale or has the option to add Additional Property or any portion thereof to the Development, Declarant shall have an alienable and transferable right and easement on, over, through, under, and across the Common Areas for the purpose of constructing or improving Lots or Dwellings, any improvements to the Common areas, and the Additional Property and for installing, maintaining, repairing, and replacing such other improvements to the Development as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described in this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

3.4 Changes in Boundaries; Additions to Common Areas. Declarant expressly reserves for itself and its affiliates, successors and assigns, the right to change and realign the boundaries of any Lots or Dwellings owned by Declarant, including the realignment of boundaries between adjacent Lots and/or Dwellings and Common areas, owned by Declarant. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time, and from time to time, any portion of the Additional Property, such real property to be conveyed to the Association as an addition to the Common Areas and subject to the other provisions set forth in this Declaration. Furthermore, Declarant reserves for itself, its affiliates, successors, and assigns the right, but not the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Common Areas, any easements, streets, roads or rights-of-way located within the Development and not contained within a Lot or Lots.

3.5 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority to any agency, public service district, public or private utility, or other person, upon, over, under, and across: (1) all of the Common Areas, and (2) all land within Lots located within the set back lines as established by Declarant for the purpose of installing, replacing, repairing, maintaining and using master television antenna, and/or cable systems, security and similar systems, and all utilities, including, but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer equipment, apparatus, and lines. Such easements shall also be for the benefit of Owners should such systems and lines serving a Lot be outside the boundaries of such Lots. Such easements may be granted or accepted by Declarant, its successors and assigns or by the Board of Directors; provided, however, that for so long as Declarant owns any portion of the Common areas, owns any Lot or Dwelling primarily for the purpose of sale or has the option to add the Additional Property, or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting or accepting any such easements. To the extent possible, all utility lines and cables serving the Development and located therein shall be located underground though some transformers and switchboxes may be located above ground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered: (1) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (2) to cut and remove any trees, bushes or shrubbery; (3) to grade, excavate or fill; or (4) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

3.6 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees, including, but not limited to, any property manager employed by the Association and any employees of such manager, to enter upon any Lot or Dwelling in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner, occupant or Owner(s) directly affected thereby.

3.7 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant, its affiliates, successors and assigns, the perpetual, alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business offices and model or sample Lots or Dwellings, together with such other facilities as in the sole opinion of Declarant reasonably may be required, convenient or incidental to the completion, improvement, sale of Lots, Common Areas or the Additional Property for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property or any portion thereof to the Development. Declarant shall have the right to locate the sales and construction offices within the Development without the additional consent of any Owners.

3.8 Easements for Additional Property. There is hereby reserved by the Declarant, its successors, assigns and successors-in-title to the Additional Property, for the benefit of and

appurtenant to the Additional Property and as a burden upon the Development, the perpetual, non-exclusive rights and easements for: (1) pedestrian and vehicular access, ingress, egress and parking over, across, within and on all roads, sidewalks, trails, parking facilities and lagoons from time to time located on or within the Common Areas or within easements serving the Common Areas; (2) the installation, maintenance, repair, replacement and use of security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers and electrical, gas, telephone, water, sewer and master television antenna and cable system lines; and (3) drainage and discharge of surface water onto and across the Development, provided that such drainage and discharge shall not materially damage or affect the Development or any improvements from time to time located thereon.

3.9 Maintenance Easement. Subject to the terms of this Declaration, there is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any unimproved portion of any Lot for the purpose of mowing, removing, clearing, cutting, or pruning any vegetation, weeds, stumps or other unsightly growth, removing trash and maintaining sidewalks, and any walls not excluded above, so as to maintain reasonable standards of health, fire safety and appearance within the Development. In addition, there is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable, and perpetual right and easement to enter upon any Encroachment Area of any Dwelling for the purpose of making repairs so as to maintain reasonable standards of health, fire safety and appearance within the Development, provided that such easement shall not impose any duty or obligation upon Declarant or the Association but that such duty to maintain shall be that of the Owner. Furthermore, there is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any unimproved portions of Lots or Dwellings located within twenty-five (25') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of mowing such area and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation dredging and the maintenance of reasonable water quality standards. Finally, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter any Lot or Dwelling or both to perform the duties and responsibilities set forth in Paragraph 6.2 herein.

3.10 Environmental Easement. There is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Areas, Lots and Dwellings for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

3.11 Construction Easement. There is hereby reserved for the benefit of the Declarant and the Owners and their respective agents, employees, successors and assigns an unalienable,



untransferable and temporary right and easement for access to Lots upon which construction or repairs of a Dwelling has commenced over and across: (i) the Common Areas; (ii) the areas designated as "20' feet wide construction access easement" within Lots shown on recorded subdivision survey; and (iii) the exterior walls and roofs of adjacent Dwellings. Any such Owner utilizing the easement reserved herein shall be responsible to restore such portions of the Common Areas, construction easement, exterior walls and roofs so utilized to as good a condition prior to the commencement of such construction.

3.12 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of the Declaration.

## ARTICLE IV

### USE RESTRICTIONS

4.1 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any improvements located within the Development, without the express written permission of the Board of Directors. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Board of Directors and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 4.1 shall not apply to Declarant. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas and within those easement areas established in Article III.

4.2 Unauthorized Signs. Any signs or posters displayed within the Development in violation of this Section may be reviewed by Declarant, and Declarant shall have the right to enter upon the premises where such signs or posters are displayed for the purpose of removing the unauthorized sign or poster without it being deemed a trespass.

4.3 Pets. No animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by any Owner upon any portion of the Development, except as provided in rules and regulations adopted by the Association, through its Board of Directors. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance.

4.4 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Development. No noxious or offensive activity shall not be carried on, upon or in any Lot or Dwelling, which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Any waste, garbage, or refuse materials produced or occurring as a result from the

permitted activities conducted within any portion of the Development shall be stored, processed and transported away from the Development in a safe, neat, clean, efficient, healthy and sanitary manner.

4.5 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwellings or the developing of Lots, Dwellings, and the Additional Property, including, without limitation, the installation and operation of construction trailers and sales offices, signs and model Dwellings, provided that the location of any construction trailers of any assignees of Declarant's under this Section 4.5 shall be subject to Declarant's approval.

4.6 Repurchase Option. Each Owner is required to commence construction of a Townhome within three (3) years (the "Third Anniversary") of the date such Owner receives title to a Lot from the Declarant (the "Original Closing Date"). The Third Anniversary shall also be the date that any successor Owner of a Lot must commence such construction. Should an Owner or such successor Owner fail to commence such construction by the Third Anniversary, the Declarant shall have the absolute right to repurchase the Lot free and clear of liens and encumbrances within ninety (90) days from the date of the Third Anniversary upon the payment of the purchase price paid for the Lot on the Original Closing Date with no interest or reimbursement of cost of ownership.

4.7 Time Sharing. No Lot or Dwelling shall be marketed, subjected to or encumbered by any program of timesharing, interval ownership or fraction ownership or a program of vacation leasing or licensing.

4.8 Short Term Leasing. No Lot or Dwelling shall be leased for a period of less than six (6) months.

## ARTICLE V

### MEMBERSHIP AND VOTING

5.1 Membership: Lot and Dwelling Owners. Every Owner shall have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling, and ownership of a Lot or Dwelling shall be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association shall automatically pass to the transferee. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Where a Mortgagee or other person holding an interest in a Lot or Dwelling as security for the performance of an obligation acquires title to such Lot or Dwelling through a foreclosure proceeding or the issuance of a deed in lieu of foreclosure, such Mortgagee or other transferee shall be deemed to have a membership in the Association upon acquiring title to such Lot or

Dwelling. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot or Dwelling.

The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a Member or a Member's spouse, but in no event shall more than one vote be cast or more than one office held for each Lot or Dwelling. A Member casting a vote or holding an office with respect to his Dwelling shall not be entitled to cast an additional vote or hold an additional office for the Lot upon which his Dwelling is located. When more than one person holds an interest in any Lot or Dwelling, the vote for such Lot or Dwelling shall be exercised as those Owners of such Lot or Dwelling themselves determine and notify the Secretary or an Assistant Secretary of the Association prior to any meeting. In the absence of such notice, the vote appurtenant to such Lot or Dwelling shall be suspended in the event more than one person seeks to exercise it. Such a suspended vote shall not be cast with regard to voting matters of the Association until the persons owning such Lot or Dwelling determine how such vote shall be cast and so advise the Secretary or Assistant Secretary of the Association. The voting weight appurtenant to each Lot or Dwelling is equal and each Lot or Dwelling shall have one vote. Such voting weight shall continue to be equal upon the addition of all or a portion of the Additional Property to the Development, and each Lot or Dwelling therein shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of the Additional Property or any portion thereof to the terms of this Declaration as provided herein.

## ARTICLE VI

### MAINTENANCE

6.1 Responsibilities of Owners. All maintenance and repair of the interior and exterior of the Dwellings, together with all other improvements thereon or therein, shall be the responsibility of the respective Owners. Any improvement, which encroaches on to or over an adjacent Lot or Dwelling, shall be maintained by the Owner of such improvement. Each Owner shall be responsible for maintaining such Owner's Dwelling in a neat, clean, and sanitary condition. No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements within a Lot unless such is first approved, in writing, by the Architectural Standards Committee.

6.2 Responsibilities of Association. The Association shall maintain and keep in good repair all lawns, landscaping, and grounds on and within a Dwelling and all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of: (1) all lawns, landscaping, and grounds on and within a Dwelling; (2) water for irrigation systems for all Dwellings; (3) all common areas, walks, trails, lagoons, ponds, lakes, pools, parking lots, landscaped areas and other improvements situated within the Common Areas; (4) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by the Declarant or a public authority, public service district, public or private utility or other person; and (5) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Development as it may be constituted from time to time.

The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (c) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. The Association shall not be liable to any Owner for personal injury or harm, loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Development. No diminution or abatement of assessments, or any dues, fees or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

## ARTICLE VII

### INSURANCE AND CASUALTY LOSSES

#### 7.1 Insurance.

7.1.1 The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board of Directors deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

7.1.2 The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

7.1.3 The Board of Directors or its duly authorized agents shall have the authority and may obtain worker's compensation insurance to the extent necessary to comply with any applicable laws, and such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

7.1.4 All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all



such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth.

7.1.5 It shall be the individual responsibility of each Owner of a Lot or Dwelling at his own expense to provide, as he sees fit, public liability, property damage, title, and other insurance with respect to his own Lot and Dwelling.

7.2 Damage or Destruction to Lots or Dwellings. In the event of damage or destruction by fire or other casualty to any Dwellings and in the further event that the Owner of such Dwelling, responsible for the repair and replacement thereof, elects not to repair or rebuild the damaged or destroyed Dwelling, such Owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave the Lot in a clean, orderly, safe, and sightly condition. Should such Owner elect to repair or rebuild such Dwelling, such Owner shall repair or rebuild such Dwelling to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration. All such work or repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

## ARTICLE VIII

### ADMINISTRATION

8.1 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Code of Laws of South Carolina relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the South Carolina Code of Laws, this Declaration, the By-Laws, and the Articles of Incorporation, in that order, shall prevail, and each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association shall have the power to purchase or otherwise receive title to one or more Lots, Dwellings, or Common Areas and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to the Owner of any Lot and Dwelling, to furnish trash collections, water, and sewer services for the Common Areas.

8.2 Agreements. Subject to the prior approval of Declarant, as long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, all agreements and actions lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or

the privilege of possession and enjoyment of any part of the Development. In performing its responsibilities hereunder, the Association, through its Board, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board.

In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal, accounting and other professional services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

8.3 Management Agreement. The Declarant or an affiliate shall be employed as the manager of the Association and the Development for a period not to exceed five (5) years commencing with the recording of this Declaration. Provided, however, after giving sixty (60) days notice to the Association of such intention, the Declarant shall have the right to terminate such management. After any such termination, the Board of Directors of the Association shall select and employ an entity or individual to act as manager of the Association and the Development.

8.4 Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association.

8.5 Common Areas. The Association, subject to the rights of the Declarant, and the rights and duties of the Owners set forth herein, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon and shall keep the same in a good, clean, attractive and sanitary condition, order and repair pursuant to the terms and conditions hereof. Except to the extent otherwise required by the provisions of the Code of Laws of South Carolina, 1996, as amended, relating to non-profit corporations, this Declaration, the By-Laws, the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the Officers of the Association without any further consent or action on the part of the Owners.

## ARTICLE IX

### ASSESSMENTS

9.1 Purpose of Assessments. The assessments levied by the Association shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners, their respective families, guests, tenants, and invitees, and for the improvement, protection, replacement, operation and maintenance of the Development and any improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

9.2 Creation of Lien and Personal Obligation of Assessments. Subject to the provisions of Section 9.5 herein, each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges for the operation and maintenance of the Common Areas, including such reasonable reserves as the Association may deem necessary, and to be established and collected as provided in this Article; (b) special assessments to be established and collected as provided in this Article; and (c) individual or specific assessments against any particular Lot or Dwelling, which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Lot or Dwelling. Any such assessments, together with late charges, simple interest at the maximum rate allowable by law per annum, court costs and attorneys' fees incurred to enforce or collect such assessments, shall be an equitable charge and a continuing lien upon the Lot or Dwelling against which each such assessment is made. Each Owner shall be personally liable for assessments coming due while he is the Owner of a Lot or Dwelling. His grantee shall take title to such Lot or Dwelling, subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee. The lien for unpaid assessments shall not apply to the holder of any first priority Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, and who takes title to a Lot or Dwelling, through foreclosure or through conveyance of a deed in lieu of foreclosure or to any purchaser of such Lot or Dwelling at such foreclosure sale. In the event of co-ownership of any Lot or Dwelling, all of such co-Owners shall be jointly and severally liable for the entire amount of such assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors.

9.3 Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year. The budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause a copy of the budget and the proposed total of the annual assessments to be levied against Lots or Dwellings for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either: (i) Declarant, as long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) a vote of a majority of the votes of the Owners who are voting in person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board

fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, the budget and annual assessments in effect for the current year shall be increased in proportion by the greater of either ten (10%) percent of the budget and assessments for the previous year or by the percentage increase, if any, over the previous year's Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967=100), or its successor index, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 9.6 hereof. The Common Expenses to be funded by the Annual Assessments may include, but shall not necessarily be limited to, the following:

9.3.1 Management fees and expenses of administration, including legal and accounting fees;

9.3.2 Utility charges for utilities serving the Common Areas and charges for other common services for the Development, including trash collection for the Common Areas and security services, if any such services or charges are provided or paid by the Association;

9.3.3 The cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;

9.3.4 The expenses of maintenance and repair of the landscaping of Dwellings and the provision of water for irrigation systems of Dwellings, as well as the landscaping of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration;

9.3.5 The expenses of maintenance, operation, and repair of other amenities and facilities serving the Development, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association;

9.3.6 Ad valorem real and personal property taxes assessed and levied against the Common Areas;

9.3.7 Sums due under that certain Use Agreement between the Association and the Council of Co-Owners for the Berwick Green Horizontal Property Regime.

9.3.8 Such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and

9.3.9 The establishment and maintenance of a reasonable reserve fund or funds:  
(a) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired,



or replaced on a periodic basis, (b) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (c) arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

9.4 Division of Annual Assessments. The total Annual Assessments shall be divided among the Lots and Dwellings as hereinafter provided. Upon the addition of the Additional Property or any portion thereof to the Development, the Lots and Dwellings being added to the Development shall thereafter pay assessments which are equal to those imposed upon Lots and Dwellings previously in the Development. In such event, the Association's budget shall be accordingly revised by the Board without the necessity of approval by the Owners to include common expenses and assessments related to such additional Lots and Dwellings. The Annual Assessments shall be divided as follows:

9.4.1 The Owner of each Lot in the Property shall pay Annual Assessments which, beginning in 2005, shall be Two Thousand One Hundred Dollars (\$2,100). The Annual Assessments for each Lot may thereafter be increased by the greater of either ten (10%) percent of the assessment for the previous year or the percentage increase, if any, over the previous year's Consumer Price Index as defined in Section 9.3 herein;

9.4.2 The Owner of each Dwelling in the Property shall pay Annual Assessments which, beginning in 2005, shall be Two Thousand One Hundred Dollars (\$2,100). The Annual Assessments for each Dwelling may thereafter be increased by the greater of either ten (10%) percent of the assessment for the previous year or the percentage increase, if any, over the previous year's Consumer Price Index as defined in Section 9.3 herein.

9.5 Annual Assessments to be Paid by Declarant. For Lots owned by the Declarant, the Declarant shall pay the Annual Assessments in accordance with Section 9.4.1 herein. For Dwellings owned by the Declarant, the Declarant shall pay an amount equal to that portion of the Annual Assessment for each Dwelling budgeted for the Common Expenses enumerated in Section 9.3.9(a) herein

9.6 Special Assessments. The Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that any such assessment shall be approved by: (i) Declarant, as long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.8 hereof. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots and Dwellings, as provided with respect to annual assessments.

9.7 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any

Owner shall be specially assessed against such Owners and their respective Lots or Dwellings. The amount and due date of such assessment shall be established by the Board of Directors.

9.8 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. With respect to the annual meeting, the presence of Members or proxies entitled to cast over fifty (50%) percent of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five (25%) percent of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.9 Liens. All sums assessed against any Lot or Dwelling, pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Dwelling, in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot or Dwelling, except only for: (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a first priority mortgage and all amounts advanced pursuant to any such mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments and charges to the lien of such mortgages shall only apply to such assessments and charges which have become due and payable prior to a foreclosure. All other persons acquiring liens or encumbrances on any Lot or Dwelling, after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments and charges as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

9.10 Effect of Nonpayment; Remedies of the Association. Any assessments or charges not paid when due shall be delinquent. Any assessment or charge delinquent for a period of more than ten (10) days after the date when it is due shall incur a late charge in an amount as may be determined by the Board of Directors from time to time and shall also commence to accrue simple interest at the rate equal to the lesser of fifteen (15%) percent per annum or the maximum interest rate allowed by the laws of the State of South Carolina. A lien and equitable charge as herein provided for each assessment or charge shall attach simultaneously as the same shall become due and payable, and if an assessment or charge has not been paid within thirty (30) days, the entire unpaid balance of the assessment or charge may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment or charge shall include the late charge established by the Board and interest on the principal amount due at the rate equal to the lesser of fifteen (15%) percent per annum or the maximum interest rate allowed by the laws of the State of South Carolina, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the assessment or charge remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts or to foreclose its lien, or both. The equitable charge and lien shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot or Dwelling, vests in the Association and its agents the right and

power to bring all actions against them personally for the collection of such assessments and charges as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot or Dwelling, at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments and charges provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot or Dwelling, and an Owner shall remain personally liable for assessments, charges, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot or Dwelling.

9.11 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by the Treasurer, Assistant Treasurer, or manager setting forth whether the assessments and charges for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate shall be conclusive evidence against all but such Owner of payment of any assessments and charges stated therein to have been paid.

9.12 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot and Dwelling on the day on which such Lot or Dwelling is submitted to this Declaration and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual assessments and any outstanding special assessments shall be adjusted for such Lot or Dwelling according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot or Dwelling is first conveyed. Annual and special assessments for Lots and Dwellings in portions of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot and Dwelling on the day of the recording of the amendment to the Declaration so submitting such parcels, and annual and special assessments for each such Lot and Dwelling shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such assessments commence.

## ARTICLE X

### RULE MAKING

10.1 Rules and Regulations. The Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation is specifically overruled, canceled, or modified by the Board or in a special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be

approved by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

10.2 Authority and Enforcement. Upon violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments or charges, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners, occupants, or guests of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the Common Areas. The Board shall have the power to impose all or any combination of these sanctions. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days. The fines levied and assessed as provided for in this Section shall be a lien upon the applicable Lot or Dwelling in the same manner as that provided for in Section 9.8. The effect of the non-payment of such fines and the remedies of the Association to enforce collection thereof shall be the same as those provisions provided for in Section 9.9.

10.3 Procedure. Except with respect to the failure to pay assessments or charges, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Development for violations of the Declaration, the By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

10.3.1 Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:

10.3.1.1 The alleged violation;

10.3.1.2 The action required to abate the violation; and

10.3.1.3 A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

10.3.2 Within two (2) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

10.3.2.1 The nature of the alleged violation;

10.3.2.2 The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;



10.3.2.3 An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

10.3.2.4 The proposed sanction to be imposed.

10.3.3 The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Any sanctions and fines levied by the Board according to the terms and provisions of this Article shall be established by a majority vote of the Directors present at the hearing. No such hearing shall be undertaken with less than a duly constituted quorum of the Board. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if the officer, director, or other individual who delivered such notice enters a copy of the notice together with a statement of the date and manner of delivery. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

## ARTICLE XI

### GENERAL PROVISIONS

11.1 Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, Articles of Incorporation, or By-Laws of the Association, the Declarant retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of ten (10) years after the date of the recording of this Declaration; or (ii) the date on which all interests in the fee simple title of all of the Property shall have been conveyed to Owner other than a Person or Persons constituting the Declarant or a corporate subsidiary wholly owned or controlled by Declarant and Declarant has surrendered its rights in writing to submit the Additional Property or any portion or portions thereof to this Declaration; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings. A special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting, the Owners shall elect a new Board and Declarant shall deliver to the new Board all books, accounts, and records which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period.

11.2 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the records of the Office of the Register of Deeds for Beaufort County, South Carolina. Such amendment shall be without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially and adversely alters or changes any Owner's right to the use and enjoyment of his Lot or Dwelling, or adversely affects the title to any Lot or Dwelling, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.2 hereof. Any amendment made pursuant to this Section 11.2 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, agrees to be bound by such amendments as are permitted by this Section and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (a) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any 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 any Lots or Dwellings, subject to this Declaration, or (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 or Federal Home Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on a Lot or Dwelling, subject to this Declaration.

11.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 11.2 hereof, shall be proposed and adopted in the following manner:

11.3.1 Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

11.3.2 At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security, title and interest of any Mortgagee must be approved by such Mortgagee, and (ii) during any period in which Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the

Additional Property or any portion thereof to the Development, such amendment must be approved by Declarant.

11.3.3 The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

11.4 Enforcement. Each Owner shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Common Areas, or for instituting an action to recover sums due for damages, and/or for injunctive relief, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. In as much as the enforcement of the provisions of this Declaration, the By-Laws, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy provided herein shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws, or any rules and regulations of the Association.

11.5 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of the Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of the thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically

renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of an initial thirty (30) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term.

In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

11.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Kennedy, mother of former U.S. President John Fitzgerald Kennedy.

11.7 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Office of the Register of Deeds for Beaufort County, South Carolina. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

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

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



11.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners, and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

11.11 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

11.12 No Trespass. Whenever the Association, the Declarant, the Architectural Standards Committee, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be trespass.

11.13 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated, at the addresses of such Owners' respective Lots or Dwellings. All notices to the Association shall be delivered or sent to Association's main office in Hilton Head Island, South Carolina, or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant's main office in Hilton Head Island, South Carolina, or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

11.14 Coordination With the Master Covenants. Contemporaneously with the execution and recording of the Declaration, the Declarant shall cause the Lots, but not the Common Areas, to be encumbered by the Master Covenants. The Common Areas shall not be submitted to the Master Covenants, and the Common Areas shall not be deemed as Common Areas under the Master Covenants.

IN WITNESS WHEREOF, BERWICK GREEN COMPANY, L.L.C. has caused its duly authorized member to execute this Declaration under seal, this 28 day of December, 2005.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Mae Di Bo  
Margaret B. Bucking

DECLARANT:

BERWICK GREEN COMPANY, L.L.C., a  
South Carolina limited liability company

By: [Signature]  
Its Member

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

ACKNOWLEDGEMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that THOMAS JACOBY, Member of Berwick Green Company, L.L.C., a South Carolina limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 28 day of December, 2005.

Joan M. Piccione

Notary Public for South Carolina  
My Commission Expires MAY 30, 2006  
JOAN M. PICCIONE  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES MAY 30, 2006

EXHIBIT "A"

PROPERTY DESCRIPTION

ALL those certain pieces, parcels, or lots of land situate, lying and being on Hilton Head Island, South Carolina, designated as LOT NUMBERS 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38 & 40 and COMMON AREA and being more particularly shown and described on a plat entitled "A Subdivision Plat of THE TOWN HOMES AT BERWICK GREEN, a Section of INDIGO RUN PLANTATION," prepared by Antoine Vinel, SC RLS #9064, dated December 6, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 72 at Page 123.

## EXHIBIT "B"

### ADDITIONAL PROPERTY DESCRIPTION

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 12.565 acres, more or less, and being shown as BLOCK FF on a plat entitled "A Boundary Place of Block FF, a Section of Indigo Run" prepared by Antoine Vinel, SC RLS #9064, dated August 26, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 66 at Page 170.

LESS AND EXCEPT, all those certain pieces, parcels or lots of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, designated as LOT NUMBERS 1 & 3 BERWICK GREEN, PHASE I, a portion of Block FF, a Section of INDIGO RUN PLANTATION, and being more particularly shown and described on the plat thereof prepared by Antoine Vinel, SC RLS #9064, dated August 7, 1997, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 63 at Page 98.

LESS AND EXCEPT, all those certain pieces, parcels or lots of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, designated as LOT NUMBERS 5 & 7 BERWICK GREEN, a portion of Block FF, a Section of INDIGO RUN PLANTATION, and being more particularly shown and described on the plat thereof prepared by Antoine Vinel, SC RLS #9064, dated December 14, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 68 at Page 48.

LESS AND EXCEPT, all those certain pieces, parcels or lots of land situate, lying and being on Hilton Head Island, South Carolina, designated as LOT NUMBERS 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38 & 40 and COMMON AREA and being more particularly shown and described on a plat entitled "A Subdivision Plat of THE TOWN HOMES AT BERWICK GREEN, a Section of INDIGO RUN PLANTATION", prepared by Antoine Vinel, SC RLS #9064, dated December 6, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 72 at Page 123.