



**unreasonable THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION**  
**PURSUANT**  
**TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT**  
**(S.C. CODE ANN. § 15-48-10 ET SEQ.. AS AMENDED)**

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF RICHLAND        )    SECOND AMENDED AND RESTATED  
  )    DECLARATION OF COVENANTS,  
  )    CONDITIONS AND RESTRICTIONS FOR  
  )    ROLLING CREEK COMMUNITY

This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Rolling Creek Community ("Second Amendment"), is made this 4<sup>th</sup> day of December, 2002, by Dutch Fork Development Group II, LLC, a South Carolina limited liability corporation, as successor to Dutch Fork Development Group ("Declarant"). Any defined terms used herein shall have the meaning set out in Article I hereafter.

**RECITALS**

1. The Declarant is the developer of certain property described in Exhibit A of this Second Amendment and wishes to amend the Amended Declaration of Covenants, Conditions and Restrictions ("Declaration"), dated September 11, 1995, and recorded \_\_\_\_\_, 1995, in the Office of the Register of Deeds for Richland County in Book 1280 at Page 1.

2. Article VII, Section 4 of the Declaration allows the Declarant to amend the Declaration at any time, without the vote of or consent of the Lot Owners, as long as the amendment may not change the character of the properties which have been restricted from that of a residential development.

3. The Declarant desires to provide for the preservation of the value and amenities in such Community and for the maintenance of such common lands and facilities.

4. The Declarant desires to subject the real property described in Exhibit A to the covenants, conditions, restrictions, easements, charges, and liens, hereinafter set forth and to the guidelines, policies, procedures, rules and regulations adopted by the Declarant or the Association, each and all of which is and are binding upon and for the benefit of the Declarant, the Community and each Owner and shall run with the title to the land.

5. The Declarant has deemed it desirable, for the efficient preservation of the values and the amenities in the Community, to create the Association to which will be delegated and assigned as further described herein, the powers of maintaining and administering any Common Area and Area of Common Responsibility and of levying, collecting and disbursing the Assessments and charges hereinafter created. When empowered to do so by the Declarant, the Association through its Board of Directors shall be delegated and assigned the powers of administering and enforcing the Declaration; of establishing and amending the reasonable rules,

regulations and policies for the proper management of the Association and for the promotion of the health, safety and welfare of the residents of the Community.

6. The Declarant has caused the Association to be incorporated under the laws of the State of South Carolina, as a nonprofit corporation, for the purpose of exercising the aforesaid functions, among others.

NOW, THEREFORE, The Declarant declares that the real property described in Exhibit A, including but not limited to Lots \_\_\_\_\_ annexed hereto and forming a part hereof, and any additions thereto which may be incorporated from time to time in the Community is and shall be held, transferred, sold, conveyed, and occupied subject to this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions as hereinafter set forth which shall run with the title to the Property and all Lots therein and which shall be binding on all Owners.

## ARTICLE I DEFINITIONS

Section 1. DEFINITIONS The following capitalized words when used in this Second Amendment, any Supplement, or any Supplemental Declaration (unless the context shall prohibit) shall have the following meaning:

(A) "AREA OF COMMON RESPONSIBILITY" shall mean and refer to the Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or other applicable covenant, contract or agreement.

(B) "ARCHITECTURAL REVIEW BOARD" or "ARB" shall mean and refer to that Board formed and operated in the manner described hereof and in the Architectural Review Board Guidelines.

(C) "ARCHITECTURAL GUIDELINES" shall mean and refer to the set of policies, rules and procedures promulgated and/or amended by the Declarant, the Board of Directors, When Empowered, or the Architectural Review Board, When Empowered, which shall act as a guide for the architectural control and review process and for the maintenance, construction or renovation of Dwellings and Structures in the Community.

(D) "ASSESSMENTS" shall have the meaning specified in Article III.

(E) "ASSOCIATION" shall mean and refer to the Rolling Creek Community Association of Irmo, its successors and assigns.

(F) "BOARD OF DIRECTORS" shall mean and refer to the Board of Directors of the Association whether elected or appointed.

(G) "BY-LAWS OF THE ASSOCIATION" OR "BY-LAWS" shall mean and refer to the By-Laws of Association.

(H) "COMMON AREA" shall mean and refer to those areas of land shown as "Common Area", on any recorded subdivision map of the Property or so designated in any conveyance to the Association by the Declarant including, but not limited to, any and all entrance signs, lights, sprinklers, shrubs, landscaping, parking places, drainage or other easements used, owned or maintained by the Association or the Declarant for the benefit of the Community, whether or not located within the street right-of-ways which have been dedicated to a governmental agency or a Lot. Such areas are intended to be devoted to the common use and enjoyment of Members of the Association, subject to the Regulations established and amended from time to time by the Board of Directors of the Association, and are not dedicated for use by the general public. NO REPRESENTATION FROM ANY PARTY OR SALES AGENT, INCLUDING THOSE OF THE DECLARANT, OR OTHER ENTITY AS TO THE EXISTENCE OF A COMMON AREA, SIZE, SHAPE, OR COMPOSITION OF THE COMMON AREA, OTHER THAN THOSE PROVIDED HEREIN OR PROVIDED IN WRITING BY THE DECLARANT, SHALL BE RELIED UPON, NOR SHALL IT IN ANY WAY REQUIRE THE DECLARANT TO COMPLY WITH THAT REPRESENTATION.

(I) "COMMUNITY" shall mean and refer to the subdivision of the Property, including but not limited to all Lots, Dwellings, Structures, Common Areas, and Areas of Common Responsibility now contained therein and hereafter annexed into the Property.

(J) "DECLARANT" shall mean Dutch Fork Development Group II, LLC, as successor in interest to Dutch Fork Development Group, its successors and assigns.

(K) "DECLARATION" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions, any amendment or modification thereof, and supplements that annex additional land.

(L) "DIRECTOR" shall mean and refer to an elected member of the Board of Directors.

(M) "DWELLING" shall mean and refer to a single family home, if constructed in the Community.

(N) "EASEMENT AREA" shall mean that property, or portion of properties described within an easement or a "Reservation of Easement" filed or to be filed for record by the Declarant and from time to time by recorded instrument limited to or specifically reserved for the easement purposes set forth in such instruments and shall refer to those areas on each Lot or property with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto.

(O) "INTENDED FOR USE" shall mean the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in this Declaration or in deeds by which the Declarant has conveyed the Property, by notes or references on recorded plats of the Property or amendments to this Declaration.



(P) "LOT" shall mean and refer to any plot of land with such improvements, Structures and Dwellings as may be erected thereon, shown on any recorded subdivision map of The Property, but shall not include the Common Area, Areas of Common Responsibility or the streets in the Community.

(Q) "MASTER PLAN" or "SKETCH PLAN" shall mean and refer to the drawing which represents the conceptual land plan for the future development of Rolling Creek. Since the concept of the future development of the undeveloped portions of Rolling Creek is subject to continuing revision and change at the discretion of the Declarant, present and future references to the "Master Plan" shall be references to the latest revision thereof. In addition, no implied reciprocal covenants or obligation to develop shall arise with respect to lands which have been retained by the Declarant for future development. **THIS DECLARATION DESIGNATES ALL OR PORTIONS OF THIS PROPERTY FOR A PARTICULAR USE. THE DECLARANT SHALL NOT BE BOUND BY ANY MASTER PLAN, USE OR RESTRICTION OF USE SHOWN ON ANY MASTER PLAN, AND MAY AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN OR NOT DEVELOP THE REMAINING UNDEVELOPED PROPERTY OR COMMON AREA OR AMENITIES.**

(R) "OFFENSIVE or NOXIOUS" activity, trade or behavior shall include but not be limited to a public nuisance or nuisance per se and shall also include any behavior or activity which is inconsistent with both the reasonable pleasurable use of the Property by a substantial number of the residents and overnight guests and their reasonable expectations of permanent habitation, working, recreating, or enjoying sports, music, food, natural surroundings, and entertainment, free of excessively noisy grossly disrespecting the rights of others, flashing or excessively bright lights, racing vehicles, significantly loud radio, hi-fi, electronic music distraction, and other unreasonable behavior curtailing the reasonable pleasure and use of the facilities within the Property. Public musical or other entertainment, parades, concerts, festivals, carnivals, competitions or shows conducted under permit from the Association shall not constitute offensive or noxious activity or behavior unless such permit is withdrawn by the Association, or its terms and conditions violated.

(S) "OWNER" shall mean the record owner, including purchasers in possession, whether one or more person or entities, of a fee simple title to any Lot which is a part of the Property.

(T) "PROPERTY" shall mean and refer to all property, including but not limited to, the Lots, streets and Common Area, subjected to this Declaration, which are described in Exhibit A, together with any additional land that may be developed pursuant hereto and annexed or incorporated in The Property by amendments or supplemental Declarations.

(U) "REGULATIONS" shall mean and refer to the guidelines, rules, policies, and procedures, including, but not limited to, the Architectural Guidelines, adopted by the Declarant, the Board of Directors, When Empowered, or the Architectural Review Board, When Empowered.



(V) "STRUCTURE" shall mean and refer to any thing, object, tree or landscaping, the placement, size, shape, color, height and quality of which upon any Lot or Common Area may affect such Lot or Common Area, including by way of illustration and not limitation, any Dwelling, building or part thereof, including but not limited to, concrete block, garage, porch, shed, greenhouse, or bathhouse, coop or cage, covered or uncovered patio, playgrounds, playground equipment, tree houses and yard art, statuary, clotheslines, garbage or recycling containers, basketball goals (permanent or temporary), or other temporary or permanent sports equipment, swimming pool, fence, curbing, paving, driveways, wall or hedge, radio, television, wireless cable, or video antenna, satellite dishes, landscaping, sign, appurtenance, or signboard, whether temporary or permanent; any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of waters from, through, under or across any Lot or Common Area, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot or Common Area; and any change in the grade of any Lot or Common Area of more than six (6) inches.

(W) "WHEN EMPOWERED" shall mean when Declarant has transferred the right of performing some function to the Association's Board of Directors or another entity by the recordation of a document in the office of The Register of Deeds for the county in which the Property is located, or by giving written notice to the Association at the Association's address of record, or to all Owners attending a duly called meeting for that purpose. Except as otherwise provided herein, the transfer of all functions to the Association and the rights and authority of the Declarant for architectural control in the Community shall automatically occur when one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale.

## ARTICLE II USE OF PROPERTY AND EASEMENTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall take title subject to the following easements and assessments which shall be appurtenant to and shall pass with the title to lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable assessments for operating expense, repairs and maintenance of the Common Areas, Limited Common Areas, Common Property and Areas of Common Responsibility; to establish reserves for major repairs or improvements and assessments for any other Common Area, Limited Common Area, Common Property and Areas of Common Responsibility that may be granted to or be purchased by the Association or uses budgeted by the Board; to enforce this Declaration and to correct violations at the Owners cost, after due notice, and lien on the Lots for such cost and unpaid assessments as set forth in Article III herein;
- (b) the right of the Association to suspend the voting rights of an owner and to assess fines or penalties against any Lot or an Owner, as hereinafter provided.

Section 2. RESIDENTIAL USE OF PROPERTY. All Lots now or hereafter

located in the Community shall be used for single-family residential purposes only, and no commercial, business or business activity shall be carried on or upon any Lot at any time, except with the written approval of the Association; provided, however, that nothing herein shall prevent the Declarant, its agents, representatives, employees, or any builder of homes in the Community, approved by the Declarant, from using any Lot owned by the Declarant or such builder of homes for the purpose of carrying on business related to the Community or related to the improvement and sale of Lots or Dwellings in the Community; operating a construction office, business office, or model home, displaying signs, and from using any Lot for such other facilities as in the sole opinion of the Declarant may be required, convenient, or incidental to the completion, improvement, and sale of the Lots, Dwellings, or the Community; and provided, further that, to the extent allowed by applicable zoning laws, "home occupation", as defined in the Architectural Guidelines or in the zoning ordinances of the governmental authority having jurisdiction over the Lot, may be maintained in a Dwelling located on any of the Lots as approved in writing by the Declarant or the Board of Directors of the Association, When Empowered and the governmental authority having jurisdiction over the Lot, so long as the "home occupation" complies with any and all conditions of such approvals. No Structure of temporary character, trailer, tent, shack, barn or other out-building shall be used on said Lot either temporarily or permanently, unless approved by the Declarant, the Board of Directors, When Empowered, or the Architectural Review Board, When Empowered.

Section 3. DELEGATION OF USE. Any Owner may delegate, in accordance with these Covenants and Restrictions, his right of enjoyment to the Common Areas, Limited Common Areas, Common Property and facilities to the members of his family, or to tenants, who reside on the Lot of the Owner.

Section 4. ACCESS BY DECLARANT OR ASSOCIATION. For the purpose of performing its function under this or any other Article of the Declaration, to correct any violation of this Declaration, the Architectural Guidelines or the Regulations, and to make necessary surveys in connection therewith, the Association, its duly authorized agent and employees, or the Declarant shall have the right to enter upon any Lot.

Section 5. EMERGENCY ACCESS. There is hereby reserved and granted to the Declarant, the Association, their directors, officers, agents, employees, and managers and to all policemen, firemen, ambulance personnel and all similar emergency personnel an easement to enter upon the Property, any part thereof or Lot in the proper performance of their respective duties. Except in the event of emergencies, the rights under this Section shall be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner affected thereby. The rights granted herein to the Association includes reasonable right of entry upon any Lot, Dwelling or Structure to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Community or to enforce the terms of the Declaration.

Section 6. CONSTRUCTION IN ACCORDANCE WITH PLANS. EXCEPT AS PROHIBITED BY LAW, INCLUDING 47 U.S.C. § 303 NT, AND RELATED FCC RULES, 47 CFR § 1.4000 (WHICH LIMITS, BUT DOES NOT ENTIRELY PROHIBIT, CONTROL BY THE ASSOCIATION OF THE SIZE AND LOCATION OF ANTENNAS AND SATELLITE

DISHES), NO STRUCTURE SHALL BE CONSTRUCTED, ERECTED, MAINTAINED, STORED, PLACED, REPLACED, CHANGED, MODIFIED, ALTERED OR IMPROVED ON ANY LOT UNLESS APPROVED BY THE DECLARANT, THE BOARD OF DIRECTORS OF THE ASSOCIATION, WHEN EMPOWERED, OR ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, AND OTHER APPROPRIATE OR APPLICABLE GOVERNMENTAL ENTITY AND USE OF APPROVED STRUCTURES SHALL COMPLY WITH THE REGULATIONS ISSUED BY THE DECLARANT OR ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, FROM TIME TO TIME. NO CONSTRUCTION, RECONSTRUCTION, ERECTION, REPAIR, CHANGE, MODIFICATION SHALL VARY FROM THE APPROVED PLANS. The Declarant and the Architectural Review Board, When Empowered, shall have complete discretion to approve or disapprove any Structure. The Declarant and the Architectural Review Board, When Empowered, may issue from time to time Architectural Guidelines and Regulations to assist it in the approving of Structures and may change such Architectural Guidelines and Regulations at any time and from time to time without notice to the Owners. (For definition of Structure, see Article I, Section 1(X).) Notwithstanding anything herein to the contrary, until one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, or the Declarant chooses to relinquish this right by giving written notice thereof, the Declarant may, at its sole option, approve or disapprove any Plans approved or rejected by the Architectural Review Board appointed by the Declarant or overturn any other action of such Architectural Review Board. Such action by the Declarant shall supersede and nullify the action taken by such Architectural Review Board.

Section 7. SUBDIVISION OF LOTS OR COMBINATION OF LOTS No Lot shall be subdivided into two or more Lots, nor shall any portion of any Lot be sold, conveyed, or leased except with the approval of the Declarant or the Board of Directors, When Empowered, and only to an adjoining Lot Owner; provided, however, that this shall not prevent the Declarant from modifying or changing the Lot lines or sizes or the number of Lots.

Section 8. LIVESTOCK AND PETS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small household pets may be kept, subject to applicable leash laws or Regulations established and amended by the Declarant or by the Board of Directors of the Association, from time to time, provided that they are not kept, bred or maintained for any commercial purpose. Such household pets must not constitute a nuisance as determined by the Board of Directors in its sole discretion within the Community or cause unsanitary conditions within the Community, and no animal kept outside the Dwelling shall be kept in a manner which disturbs the quiet enjoyment of the Community or any other Owner. While not in a fully confined area, all pets shall be restrained by leashes and no pet shall enter upon any Lot without the express permission of that Owner or on the Common Area without express permission of the Association. The pet owner will be responsible for clean up and removal of fecal matter deposited by such pet and shall be liable for, indemnify and hold harmless any other Owner, the Declarant and the Association from any loss, cost, damage or expense incurred by such Owner, the Declarant, the Association as a result of any violation of this provision. (See Article IX for the Association's Remedies for Violation.)



Section 9. OFFENSIVE ACTIVITIES. No noxious, offensive or illegal activities as determined by the Declarant or the Board of Directors shall be carried on upon any Lot, Common Area, street nor shall anything be done thereon which is or may become an annoyance or nuisance to any Owner in the Community. (See Article IX for the Association's Remedies for Violation.)

Section 10. TRAILERS, TRUCKS, BUSES, BOATS, PARKING, ETC. No buses, trailers or mobile homes, motorcycles, boats, boat trailers, all terrain vehicles, go-carts, campers, vans or vehicles on blocks, unlicensed vehicles, or like vehicles shall be kept, stored, used, or parked overnight either on any street within the Community, in the Common Area or on any Lot, without the approval of the Declarant or the Board of Directors of the Association, When Empowered. No unsafe parking shall be allowed on any streets in the Community. The Declarant or the Board of Directors of the Association, When Empowered, may in its sole discretion determine what is unsafe and issue regulations to control on and off street parking. (See Article IX for the Association's Remedies for Violation.)

Section 11. WAIVER OF SETBACKS, BUILDING LINES AND BUILDING REQUIREMENTS. The Declarant, the Board of Directors of the Association, When Empowered, and Architectural Review Board, When Empowered may waive violations of the setbacks and building lines shown on any plat of the Community. Such waiver shall be in writing and recorded by the Owner in the County Register of Deeds. A document executed by the Declarant, the Board of Directors of the Association, When Empowered, or the Architectural Review Board, When Empowered shall be, when recorded, conclusive evidence that the requirements hereof have been complied with. The Declarant, the Board of Directors of the Association, When Empowered, or Architectural Review Board, When Empowered, may also, from time to time as they see fit, eliminate violations of setbacks and boundary lines by amending the Plat. Nothing contained herein shall be deemed to allow the Declarant, the Board of Directors of the Association, When Empowered, or the Architectural Review Board, When Empowered, to waive violations which must be waived by an appropriate governmental authority without the Owner obtaining a waiver from such authority.

Section 12. YARD AND LANDSCAPING MAINTENANCE.

(a) In the event that the Owner of any residential Lot fails to maintain their yard and overall landscaping in a manner in keeping with the Declaration, as determined by the Declarant, the Board of Directors of the Association, When Empowered, or an Architectural Review Board, When Empowered, from time to time as they see fit, the Declarant, the Board of Directors of the Association, When Empowered, or the Architectural Review Board, When Empowered, may issue a compliance demand requiring the Owner of the residential Lot to bring the Lot into keeping with the Declaration, as determined by the Declarant, the Board of Directors of the Association, When Empowered, or the Architectural Review Board, When Empowered. If the Owner of the residential Lot fails to comply within the time required by the notice, the Declarant, the Board of Directors of the Association, When Empowered, or the Association may enter upon the Lot, bring the Lot into keeping with the Community, as provided above, and levy against the Owner of the Lot an Assessment for Non-Compliance and such Assessment shall be a lien upon the Lot.

(b) The responsibility of an Owner of a residential Lot to properly maintain their yard and overall landscaping includes, but is not limited to, the following:

- (i) prevent any underbrush, weeds, or other unsightly plants to grow upon the Lot;
- (ii) promptly remove all trees or vegetation that may die on the lot or right-of-way in front of the lot;
- (iii) provide permanent vegetation, including but not limited to grass, fully and uniformly distributed over the Lot;
- (iv) unless approved otherwise by the Declarant, the Board of Directors of the Association, When Empowered, or the ARB, When Empowered, maintain and (if they die) replace, any tree(s) and/or other vegetation upon the lot or located within the road right-of-way, that are specifically required to be removed or replaced by the Declarant, the Board of Directors of the Association, When Empowered, or ARB, When Empowered; that were required by the Declarant, the Board of Directors of the Association, When Empowered, or ARB, When Empowered, to have been protected during construction; or that were placed in this area in accordance with an approved landscape plan;
- (v) provide proper grading and drainage on the Lot, in accordance with Article X, Section 8 of this Declaration;
- (vi) prevent and repair any erosion on the Owner's Lot, any other Lot, or any street in the Community caused by surface run-off from the Owner's Lot, in accordance with Article X, Section 8 of this Declaration; and
- (vii) providing at their own expense general maintenance, including but not limited to proper watering, insect and weed control, fertilization, pruning, regular replacement of straws and mulch, proper drainage control, etc. and other types of normal maintenance not provided by the Association, of the overall landscaping and grass in compliance with the regulations and guidelines established by the Declarant, the Board of Directors of the Association, When Empowered, or the Architectural Review Board, When Empowered.

(c) Any entry by the Association or the Declarant or their agents, employees, officers or contractors under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Declarant and to the Association for the purpose of entry onto any residential Lot for the purpose of enforcing this paragraph. This provision shall not be construed as an obligation on the part of the Declarant, the Association or their assigns to provide garbage or trash removal services. As provided herein, these rights may be assigned by the Declarant to the Association, or other appropriate entities. The Owner shall hold harmless the Declarant, its agents and employees, officers and contractors and the Board of Directors or the Architectural Review Board, When Empowered, from any liability incurred arising out of correcting the Owner's breach of this Section.



Section 13. LEASES OF LOTS. Any lease agreement between an Owner and a tenant for the lease of such Owner's Dwelling on the Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles of Incorporation and By-Laws of the Association, and any Regulations promulgated by the Association. The Owner shall incorporate in any lease of any Lot or Dwelling a provision stating that failure to comply with the terms of such documents shall be default under the terms of the lease. All leases of Lots shall be in writing and a copy of the executed lease, upon written demand, must be provided to the Declarant or the Board of Directors.

Section 14. STREET LIGHTING CHARGE It is understood and agreed that Mid-Carolina Electric Cooperative will be providing street lights for the subdivision and each resident will be assessed a proportional monthly charge for said Street lights, as provided for by South Carolina Public Service Commission.

Section 15. UTILITY EASEMENTS Perpetual easements for drainage, for the installation and maintenance of gas, electricity, telephone, water, sewer and other utilities are reserved as shown on the subdivision plat of the Property, and where not reserved on said plat, a perpetual easement five (5') feet, more or less in width is hereby reserved along the side line of each Lot and twelve (12') feet, more or less, in width along the front and rear of each Lot as shown on said plat. The Property is sold "as is" and Declarant shall not be responsible for the installation or maintenance of storm drains, control of surface water, or maintenance of any streets dedicated to Richland County after said streets have been dedicated to the County. Where drainage easements appear on said plat, the Owner(s) of those Lots affected agree to maintain in a satisfactory and sanitary manner those easements and shall in no way alter or otherwise hinder the proper removal of surface water. Owner(s) shall provide the driveway piping, if necessary, at his driveway location.

### ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

#### Section 1. ASSESSMENTS.

(a) Each and every Owner of any Lot or Lots within the Property, other than the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be personally obligated to pay to the Association, the Assessments, and the Association's collection fees, attorneys fees and court cost incurred in collecting the Assessments, or in enforcing or attempting to enforce the Declaration, By-Laws and the Architectural Guidelines and Regulations established or amended by the Declarant, the Architectural Review Board, When Empowered, or the Board of Directors, When Empowered. Any Builder who purchases a Lot or Lots within the Property from Declarant for the purpose of constructing a speculative Dwelling, at the option of the Declarant, shall be allowed an exemption from paying Assessments for a period of one year after the date of the transfer of title of the Lot(s). If the Lot(s) is/are being purchased for the purpose of constructing a custom Dwelling, this exemption shall not apply. REGARDLESS OF THE NUMBER OF LOTS



DECLARANT OWNS, DECLARANT IS EXEMPT FROM PAYING ANY AND ALL ASSESSMENTS ATTRIBUTABLE TO THOSE LOTS.

(b) Assessments, together with such interest thereon, and other costs of collection; including the Association collection fees, attorney fees and court costs shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which such Assessments are levied. Owners of any Lot shall share in the obligation of any other Owner of that Lot and shall be jointly and severally liable for any Assessments, the cost of collection, attorney fees and court costs that are attributable to that Lot.

(c) The Association shall, upon demand at any time, furnish to any Owner or attorney representing the prospective purchaser of a Lot, a certificate in writing signed by an officer of the Association, setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid. At all times the Association's records with respect to payments made or due shall be deemed correct unless proper documentation to the contrary can be produced.

(d) This Article shall not be amended to eliminate or substantially impair the obligation to fix the Assessments at an amount sufficient to properly operate the Association, maintain and operate the Common Area and perform the maintenance required to be performed by the Association under this Declaration without the written consent of the Declarant.

(e) The Assessment shall be four (4) types: (1) Regular Assessments; (2) Assessments for non-compliance with this Declaration, the By-Laws of the Association, and the Regulations established and amended from time to time; (3) Assessments for Capital Improvements as described in Section 4 below; and (4) Assessments for Budgetary Shortfall as described in Section 6 below. Such Assessments to be fixed, established, and collected from time to time as herein after provided. (See Section IX for Remedies of the Association for Violation.)

## Section 2. REGULAR ASSESSMENTS.

(a) The Regular Assessments levied by the Association shall be used exclusively for the purposes of the general operation of the Association, reserves and the promotion of the health, safety, and welfare of the residents of the Community, and in particular for the improvement and maintenance of the Common Area, including but not limited to, the payment of mortgages, taxes and insurance thereon, and repair, replacement, and additions thereof, the cost of labor, equipment, materials, management, Treasurer fees, and supervision thereof, and the cost of lawn and landscaping maintenance, and refuse collection; reserves for the replacement of the Association property and improvements to the Common Area; and all other obligations or debts incurred by the Association. The Regular Assessment may be increased each year by the Board of Directors of the Association, When Empowered, by an amount not in excess of ten percent (10%) per year. If two-thirds (2/3) of the votes at called meeting of the Association are to increase said Regular Assessment by a greater amount, the Board may increase the Regular Assessment by such amount.

(b) The Board of Directors of the Association shall at all times fix the Regular Assessment based on the Association's budget for the period of the Regular Assessment. The amount of the Regular Assessment shall be uniform for each Lot except as set forth herein and shall be assessed against all Lots at the time of the Assessment. The Board of Directors shall once each year create a budget and fix the date of commencement, the size and number of installments, the method of determining the amount of all Regular Assessments against each Owner of a Lot, and shall, at that time, prepare a roster of the Owners and the Assessments applicable thereto. The roster shall be kept in the office of the Association and shall be opened to inspection by any Owner. If the Board of Directors fails to set a Regular Assessment, then the previous Assessment or the previous installment schedule shall continue until the Regular Assessment is set. A copy of the budget or any amended budget and written notice of the Regular Assessment and adjustment thereof, shall be sent to every Owner subject thereto, identifying the amount(s), due date(s), and the address to which payments are to be sent, at least thirty (30) days in advance of the due date of the first (or only) installment of each Regular Assessment.

(c) The Board of Directors may, at its sole discretion, set estimated Regular Assessments until the Regular Assessment is set and the budget completed, or may delay the billing of Regular Assessments until the budget is complete and then bill the Owners for the Regular Assessment for the entire budget period.

Section 3. ASSESSMENTS FOR NON-COMPLIANCE. In the event that any Owner, their guests or invitees fail to comply with any of the provisions of the Declaration, the By-Laws of the Association, the Architectural Guidelines and Regulations established and amended by the Declarant, the Architectural Review Board, When Empowered, or Board of Directors, When Empowered, from time to time, the Board of Directors, When Empowered, may issue Assessments in amounts as it determines in its sole discretion, which shall be an Assessment for Non-Compliance and which shall be a lien on the Lot or Lots of that Owner. (See Section IX for Remedies of the Association.)

Section 4. ASSESSMENTS FOR CAPITAL REPAIR OR IMPROVEMENTS. In addition to the Regular Assessments, the Association may levy, in any period, an Assessment (which must be fixed at a uniform rate for all Lots) for the purpose of defraying, in whole or in part, the cost of any construction or any reconstruction, unexpected repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures, equipment and personal property relating thereto, provided that such Assessment shall have the assent of more than fifty (50%) percent of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting provided, however, these periods for notice may be shorter as necessary to obtain funds for emergency repairs to the Structures on the Common Area. Subject to the provisions of Section 2, the due date or due dates of any installment of any such Assessment shall be fixed in the resolution authorizing such Assessment.

Section 5. ASSESSMENTS FOR BUDGETARY SHORTFALL. In addition to the Regular Assessment, the Board of Directors, When Empowered, may, at its option, draw from

the appropriate reserve funding or working capital funds or may levy, in any period, an Assessment (which must be fixed at a uniform rate for all Lots), subject to the provisions of Section 2, applicable to that period only, to cover any unexpected shortfall in the cashflow of the Association. Said Assessment shall not require the approval of the Membership.

Section 6. SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any first lien, mortgage or deed of trust recorded prior to the recording of the Notice of Lien by the Association or the Declarant in the Office of the Register of Deeds for the County in which the Lot is located. Sale or transfer of any Lot shall not affect the liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first lien, mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of Assessments under the Notice of Lien when recorded prior to such mortgage as to the payment thereof which becomes due prior to such sale or transfer but shall not relieve any Owner in possession of a Lot prior to such foreclosure sale or deed of trust from any personal obligation defined herein for the payment of Assessments. No such sale or transfer shall relieve such Owner from liability for any Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any subsequent first lien, mortgage or deed of trust, except for liens for Assessment due from subsequent Owners of the Lot if the Notice of Lien is recorded prior to the subsequent first lien mortgage.

Section 7. EXEMPT PROPERTY. The following properties subject to this Declaration shall be exempt from the dues, Assessments, charges, and liens created herein: (a) All Common Area and Areas of Common Responsibility as defined in Article I, Section 1 hereof and (b) Streets. Notwithstanding any provision herein, no Lots shall be exempt from said liens, except for those owned by Declarant, for as long as Declarant owns them.

#### **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS**

Section 1. MEMBERSHIP. Every Owner of a Lot which is subject to Assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. VOTING RIGHTS. The Association shall have two classes of voting Membership.

(a) CLASS "A". Class "A" Members shall be all Owners except the Declarant. Class "A" Members shall be entitled to one (1) vote for each Lot they own. When more than one (1) person holds such interest or interests in any Lot, the entire vote attributable to such Lot shall be exercised by one (1) individual who is duly authorized in writing by all of the Owners of that Lot. In no event shall more than one (1) vote or a partial vote be cast with respect to any such Lot. When more than one person holds such an interest or interests in a Lot, it shall be the responsibility of those Owners to provide the Association with written notification, with the signatures of all of those persons owning an interest in the Lot affixed, of the name and mailing



address of that person authorized to receive notification from the Association and to cast said vote. **DECLARANT HEREBY RELINQUISHES ANY AND ALL VOTING RIGHTS.**

(b) CLASS "B". Class "B" Membership is comprised of the Declarant. Declarant hereby relinquishes all of its voting rights in the Association. However, upon the transfer of a Lot from Declarant, the purchaser(s) of said Lot shall become a Class "A" Member of the Association and shall have all voting rights associated with such Membership.

## **ARTICLE V BOARD OF DIRECTORS**

Section 1. BOARD OF DIRECTORS. The affairs of the Association shall be managed by a Board of Directors composed initially of five (5) individuals who need not be members of the Association. The Board of Directors may increase or decrease its size as it sees fit, provided there shall be no less than three (3) members. The election of the Board shall be as set out in the By-laws of the Association.

Section 2. MEETINGS. Meetings of the Board shall be as set forth in the Association's By-Laws.

Section 3. POWERS AND DUTIES. The Powers and Duties of the Board shall be as set forth in the Association's By-Laws.

## **ARTICLE VI ARCHITECTURAL REVIEW BOARD (ARB)**

Section 1. PURPOSE, POWERS AND DUTIES OF THE ARCHITECTURAL REVIEW BOARD (ARB). The purpose of the ARB is to assure that all proposed uses and any construction or alteration of any Structure or Dwelling (see Article I, Section 1(M) and Section 1(X) for definitions) which takes place on any Lot or any other Property shall be performed in conformity with the objective of high quality environmental design and development as set forth in this Declaration or by the ARB Guidelines. To carry out that purpose, the ARB shall have the right pursuant to the provisions of this Article VI to approve any and all proposed uses, site plans, Structures and Dwellings to be constructed on the Property, including proposed uses, site plans, Dwellings and Structures for Common Areas. It shall also have the right to approve or disapprove any and all proposed external alterations or use changes for Lots, Dwellings or Structures including Common Areas. **NOTWITHSTANDING ANYTHING IN THIS PROVISION, UNTIL ONE HUNDRED (100%) PERCENT OF THE DWELLINGS PERMITTED BY THE MASTER PLAN HAVE CERTIFICATES OF OCCUPANCY ISSUED THEREON AND HAVE BEEN CONVEYED TO OWNERS OTHER THAN BUILDERS HOLDING TITLE FOR PURPOSES OF DEVELOPMENT AND SALE, OR DECLARANT CHOOSES TO RELINQUISH THIS RIGHT IN WHOLE OR IN PART BY WRITTEN NOTICE TO THE ASSOCIATION AS SET FORTH IN ARTICLE VI, SECTION 3 HEREIN, THE DECLARANT SHALL MAINTAIN EXCLUSIVE CONTROL OF THE ARB AND ALL ASPECTS OF ARCHITECTURAL REVIEW AS**

SET FORTH IN SECTION 3 HEREIN.

Section 2. OBJECTIVES. Architectural and Design review shall be directed towards attaining the following objectives:

- (a) preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar natural Land forms;
- (b) ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the Lots and Structures and with surrounding Lots, and Structures and does not unnecessarily block scenic views from existing Structures or tend to dominate any general development or natural landscape;
- (c) ensuring that the architectural design and structures and their materials and colors are visually harmonious with Rolling Creek overall appearance, history and cultural heritage, with surrounding development, with natural land forms and native vegetation,, and with development plans officially approved by the Declarant, or any governmental or public authority, if any, for the areas in which the structures are proposed to be located;
- (d) ensuring the plans for landscaping provide visually pleasing settings for Structure on the same Lot and on adjoining or nearby Lots, and blend harmoniously with the natural landscape;
- (e) ensuring that any development. Structure, building or landscaping of the Lots and Common Areas complies with the provisions of these Covenants;
- (f) determining the location of driveways and other improvements.

Section 3. ARCHITECTURAL REVIEW BOARD.

(a) The Declarant shall establish an Architectural Review Board (such board hereinafter referred to as the "ARB"). Unless Declarant directs otherwise, the member, shall be appointed by the Declarant until such time as the Declarant, in its sole discretion, transfers control of the ARB functions to the Association. Any member appointed by the Declarant may be removed with or without cause by the Declarant at any time by written notice to such appointee. A successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former members. When control of the ARB functions is transferred to the Association, members of the ARB shall be elected by the Board of Directors of the Association, and any member so elected may resign or be removed by the Board in the same manner as provided in the ByLaws of the Association for the resignation and removal of officers of the Board.

(b) The ARB shall select its own Chairman and he, or in his absence, the Vice-Chairman, shall be the presiding officer of its meetings. All meetings shall be held upon call of the Chairman; all meetings shall be held at such place and time as may be designated by the

Chairman. Two (2) members shall constitute a quorum for the transaction of business, provided a minimum of two (2) members appointed by the Declarant shall be present in order to have a quorum prior to transfer of control of the ARB by the Association. The affirmative vote of a majority of the members of the ARB present at the meeting at which there is a quorum shall constitute the action of the ARB on any matter before it. The ARB shall operate in accordance with its own rules of procedure and guidelines which shall be approved by the Declarant or the Board of Directors, When Empowered, and filed with the Association.

(c) The ARB is hereby authorized to retain the services of one or more consulting architects, landscape architects, urban designers, attorneys and other professional consultants as it determines necessary, to advise and assist the ARB in performing the functions here in prescribed.

(d) The ARB may adopt, promulgate, amend, revoke and enforce the Architectural Guidelines which must be approved by the Declarant or the Board of Directors, When Empowered, for the purposes of:

- (i) Governing the form and content of plans and specifications to be submitted for approval pursuant to the provisions hereof;
- (ii) governing the procedure for such submission of plans and specifications;
- (iii) establishing policies with respect to the approval and disapproval of all proposed uses and all construction or alteration of any Structure on any Lot, Common Area, Limited Common Area, roads, or entrance ways;
- (iv) establishing the location of driveways on all lots; and
- (v) approving all builders, architects and residential designers, etc. for the subdivision.

#### Section 4. PROCEDURES.

(a) Any person desiring to construct, maintain, place, replace, reconstruct any Structure on any Lot or Common Area or to make any improvements, alteration or changes to any Structure shall submit Plans and any other required documentation required by the Declarant or the Architectural Review Board, When Empowered which shall evaluate, approve or disapprove in writing such Plans in light of the purpose of the Declaration. Any person using any Structure shall comply with the Regulations established and amended from time to time. An aggrieved Owner may appeal the final decision of the Architectural Review Board to the Declarant, through the processes set forth by the Declarant or the Board of Directors, When Empowered.

(b) The Declarant, the Board of Directors, When Empowered, or the Architectural Review Board, When Empowered, may charge a reasonable review fee for its initial review, the amount of which shall be established by the Declarant or the Board of Directors, When Empowered, from time to time. The Declarant or the Architectural Review Board, When



Empowered, may at its option, employ outside professional services for initial review and may pay them accordingly for this service. The charging of fees and the hiring of professionals for this purpose by the Architectural Review Board must be approved by the Declarant or the Board of Directors, When Empowered. Subsequent reviews may require additional fees.

(c) APPROVAL BY THE DECLARANT, THE BOARD OF DIRECTORS, WHEN EMPOWERED, OR THE ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, OF ANY PLANS AND SPECIFICATIONS OR THE GRANTING OF A VARIANCE WITH RESPECT TO ANY OF THE ARCHITECTURAL GUIDELINES AND REGULATIONS, WHEN ESTABLISHED, SHALL NOT IN ANY WAY BE CONSTRUED TO SET A PRECEDENT FOR APPROVAL, ALTER IN ANY WAY THE PUBLISHED ARCHITECTURAL GUIDELINES, WHEN ESTABLISHED, OR BE DEEMED A WAIVER OF THE DECLARANT'S, THE BOARD OF DIRECTORS', WHEN EMPOWERED, OR OF THE ARCHITECTURAL REVIEW BOARD'S, WHEN EMPOWERED, RIGHT IN ITS DISCRETION, TO DISAPPROVE SIMILAR PLANS AND SPECIFICATIONS, USE OF ANY STRUCTURE OR ANY OF THE FEATURES OR ELEMENTS WHICH ARE SUBSEQUENTLY SUBMITTED FOR USE IN CONNECTION WITH ANY OTHER LOT. Except for the right of the Declarant or the Board of Directors, When Empowered, to approve or disapprove the Plans on appeal, approval of the Plans relating to any Lot shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter by the Architectural Review Board, provided that there has been adherence to, and compliance with the Plans as approved in writing, and any conditions attached to any such approval and the Regulations.

(d) The Declarant, the Board of Directors, When Empowered, or Architectural Review Board, When Empowered, may, at its option, require the Owner to make a deposit to insure compliance with the approval or the Regulations in an amount and upon conditions to be determined by the Declarant, the Board of Directors, When Empowered, or Architectural Review Board, When Empowered. The setting of an amount as a compliance deposit or of conditions for compliance for any one Lot, shall not in any way act to set a precedent or effect in any way the setting of an amount or conditions of compliance for any other Lot or for any other set of Plans which are to be or have been approved by the Architectural Review Board. The terms for waiver of any deposit and for the determination of the deposit amount, conditions of payment and the release to an Owner of any remaining portion of said compliance deposit, shall be defined by the Declarant or the Board of Directors, When Empowered, in the Architectural Guidelines and Regulations, when established. Nothing herein shall be deemed to waive or limit in any way any other remedies of the Declarant, including those to insure compliance with the Architectural Guidelines and Regulations, when established, or any Owner under this Declaration or at law.

(e) NEITHER THE DECLARANT, ITS AGENTS, EMPLOYEES, DIRECTORS, OFFICERS NOR ANY OTHER MEMBER OF AN ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, SHALL BE RESPONSIBLE OR LIABLE IN ANY WAY FOR THE DEFECTS, STRUCTURAL OR OTHERWISE, IN ANY PLANS OR SPECIFICATIONS APPROVED BY THE DECLARANT, THE BOARD OF DIRECTORS, WHEN EMPOWERED, OR THE ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, NOR FOR ANY DEFECTS IN ANY WORK DONE

ACCORDING TO THE PLANS AND SPECIFICATIONS APPROVED BY THE DECLARANT, THE BOARD OF DIRECTORS, WHEN EMPOWERED, OR ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED. FURTHER, NEITHER THE DECLARANT, THE ASSOCIATION, ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, OR THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR ATTORNEYS SHALL BE LIABLE TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE DECLARANT, THE BOARD OF DIRECTORS, WHEN EMPOWERED, OR THE ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE DECLARANT, THE BOARD OF DIRECTORS, WHEN EMPOWERED, OR THE ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, FOR APPROVAL AGREES, BY SUBMISSION OF SUCH PLAN AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST THE DECLARANT, THE ASSOCIATION, THE MEMBERS OF ITS BOARD OF DIRECTORS OR THEIR AGENTS, EMPLOYEES AND OFFICERS, OR ANY MEMBER OR AGENTS OF THE ARCHITECTURAL REVIEW BOARD, WHEN EMPOWERED, TO RECOVER ANY DAMAGES ARISING OUT OF SUCH APPROVAL OR DISAPPROVAL, AND, EACH OWNER BY ACCEPTANCE OF THE DEED TO THE LOT, RELEASES, REMISES, QUIT CLAIMS, AND COVENANTS NOT TO SUE FOR, ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH SUCH APPROVAL OR DISAPPROVAL, NOTWITHSTANDING, ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 3. TRANSFER OF ARCHITECTURAL REVIEW. Unless the Declarant sooner relinquishes control, upon the sale of one hundred percent (100%) of the sites for the maximum permitted Lots or dwelling units within the existing Property, or, if additions are made to the existing Property, then upon sale of one hundred percent (100%) of the sites for the maximum permitted Lots or dwelling units within the Property, as so expanded, the Declarant shall transfer the above-described ARB to a permanent ARB which, subject to the covenants and conditions stated within the aforesaid supplemental declaration, shall be under the control of the Association. Said transfer may be effected by a letter from Declarant to the Association. This Section does not obligate the Declarant to make such transfer at any particular time; provided, however, that such transfer must be made no later than one (1) year after a Certificate of Occupancy has been issued on the last dwelling unit, as to all portions of the Property shown on recorded plats where one hundred percent (100%) of the sites for the permitted Lots or dwelling units have been sold to third parties. The Declarant may during transition of Control allow the Association's Board to elect one or more members to the ARB provided that such members have the professional qualifications established by the Declarant.

## ARTICLE VII GENERAL PROVISIONS

Section 1. ENFORCEMENT. The Declarant or the Association, When Empowered, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, lien, and charges now or hereafter imposed by the provisions of this Declaration or the ARB Guidelines. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. SEVERABILITY. Invalidation of any one of these covenants or restrictions or ARB Guidelines by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. BOOKS AND RECORDS. The book, and records of the Association shall be kept by the Association and always available for inspection by any member of the Association by appointment.

Section 4. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Declarant hereby transfers and assigns its right to amend this Declaration to the Board of Directors of the Association; provided, however, that no amendment to this Declaration may be made which would affect the Declarant's right of control over decisions regarding annexation of additional property into the Community; architectural review; limitations, restrictions or designations of use of any annexed property, including but not limited to annexed Common Area; nor may any amendment serve to delete or reduce any of the rights of the Declarant set forth herein or in the By-Laws. Should the Board of Directors of the Association choose to exercise the right to amend this Declaration, it must give the members of the Association thirty (30) days notice of such intent. The Association may veto any such amendment by the Board of Directors by a Vote of at least two-thirds (2/3) of the Lot Owners, provided each Lot Owner shall have one (1) vote for each Lot owned. Any amendment must be recorded.

Section 5. ANNEXATION. Declarant reserves the right to dedicate or deed additional Common Areas to this Association, and to construct additional Structures on the Common Areas provided at the time of the transfer of ownership, dedication or conveyance, said Common Properties shall be free and clear of all liens and encumbrances other than reasonable and normal restrictions or easements. In addition, additional residential property and common areas may be annexed to the Property by the Declarant, from time to time, without the consent of the members of the Association. Should Declarant wish to construct additional facilities, Declarant may either (1) obtain the approval of the Board of Directors of the Association and its acceptance of the costs associated with the facility(ies) or (2) agree to pay all costs associated with such facilities, including but not limited to maintenance, upkeep, taxes and insurance, until such time as enough additional Lots have been sold to permanent Owners who are responsible for paying Assessments and the Association can collect sufficient Assessments to pay for such facilities without increasing the amount of the Regular Assessment.



## ARTICLE VIII OWNER'S MAINTENANCE RESPONSIBILITIES

Section 1. OWNER'S MAINTENANCE RESPONSIBILITIES. Unless specifically identified herein or specifically elected by the Board of Directors, as being the responsibility of the Association, all maintenance and repair of a Lot, together with all portions of the Dwelling, and other Structures or the Lot shall be the responsibility of the Owner of Such Lot. The responsibility of each Owner shall include, but not limited to, the painting, maintenance, repair, and replacement of walls or fences, and all siding, exterior doors, fixtures, equipment, and appliances (including, without limitation, the heating and air-conditioning system for the Dwelling) and all chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus which are deemed to be a part of the Dwelling or Lot, and the lawns, trees, shrubs, fences, grass, driveways, walkways and any other landscaping component, on the Lot. The responsibility of the Owner shall also include, but not limited to, the maintenance, repair, and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window screens, and al screens or glass-enclosed porches, balconies, or decks which are a part of the Dwelling. Each owner shall also maintain roof, gutters and downspouts in a good state of repair.

Section 2. OWNER MUST PROVIDE INSURANCE OF DWELLING. Each Owner shall, at its own expense, insure the Dwelling and all other insurable improvements on the Lot in an amount not less than the then current maximum insurable replacement value thereof. Such coverage shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsements and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water damage.

Section 3. RECONSTRUCTION OR REPAIR OF DAMAGED DWELLING. If any Dwelling shall be damaged by casualty, the Owner of such Dwelling shall promptly reconstruct or repair it so as to restore such Dwelling nearly as possible to its condition prior to suffering the damage. All such reconstruction and repair work shall be done in accordance with plans and specifications therefor, approved by the Declarant, or Architectural Review Board, When Empowered. Encroachments upon or in favor of Dwelling or Lots, which may be necessary for or created as a result of such reconstruction or repair, shall not constitute a claim or basis of a proceeding or action by the Owner on whose Dwelling or Lot such encroachment exists, provided that such reconstruction or repair is done substantially in accordance with the plans and specifications approved by the Declarant, or Architectural Review Board, When Empowered, or as the building was originally constructed.

## ARTICLE IX REMEDIES

Section 1. REMEDIES FOR NONPAYMENT OF ASSESSMENTS. Any Assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum or the highest rate allowed by law, whichever is higher. Said interest shall be charged at the discretion of the Association's Board of Directors. In addition, the Board of Directors of the Association shall have the right to charge an Association collection

fee or late charge on any Assessment or installment thereof which shall not have been paid by its due date. In the event that the Board of Directors of the Association chooses an installment schedule for the method of payment for an Assessment or as a method of allowing an Owner to pay past due Assessments, and in the event that any installment is delinquent, the Board of Directors of the Association shall have the right to accelerate and immediately make due all or part of the Assessment due from that Owner of that Lot for that budgeted period. The Board of Directors of the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the Lot in the same manner as prescribed by the laws of the State of South Carolina or for the foreclosure of mortgages by judicial proceedings, and may seek a deficiency judgment, and interest, court costs, all costs of collection, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the Assessments provided for herein. No disagreement on the part of any Owner with respect to the budget; the amount or installment schedule for any Assessment; any change to the amount or installment schedule for the Assessment; the Regulations established or amended by the Board of Directors of the Association; the actions or lack of action on the part of the Association; the purpose for any Assessment for Capital Repair or Improvements; or the amount or purpose of any Assessment for Budgetary Shortfall shall be reason for any Owner to fail to pay any Assessment at the time that it is due. Also, the Board of the Association may at any time notify the holders of mortgages of the Lot of the failure of the Owner to pay Assessments or any other violation of the Declaration.

Section 2. REMEDIES FOR NONPAYMENT OF AD VALOREM TAXES OR LEVIES FOR PUBLIC IMPROVEMENTS BY THE ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or Assessments levied for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or Assessments in an amount determined by dividing the total taxes and/or Assessments due the governmental authority by the total number of Lots in the Community. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien, subordinate to all other mortgages, on the Lot of the then Owner, his or their heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

Section 3. REMEDIES FOR FAILURE TO MAINTAIN EXTERIOR OF DWELLING AND LOT. In the event that the Owner neglects or fails to maintain his Lot and/or the exterior of his or her Dwelling in the Community, the Association may in addition to any other remedy, provide such exterior maintenance. The Association shall first give written notice to the Owner of the specific items of the exterior maintenance or repair that the Association intends to perform and the Owner shall have the time set forth in said notice within which to perform such exterior maintenance himself or to satisfy the Association that the required maintenance or repair will be completed in a timely manner. The determination as to whether an Owner has neglected or



failed to maintain his Lot and/or Dwelling in a manner consistent with other Lots and Dwellings in the Community shall be made by the Declarant or the Board of Directors of the Association, When Empowered, or an entity authorized to do so by the Board of Directors of the Association, When Empowered. Any such determination by either Declarant or the Board of Directors, When Empowered, shall be final.

In the event the Association performs such exterior maintenance, repair or replacements repair, the costs of such maintenance, repairs or replacement together with all costs of collecting from the Owner the cost of such maintenance, repairs or replacement established herein shall be added to and become a part of the Assessment to which that Lot is subject.

In the event that the Association determines that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, including but not limited to Common Area and Areas of Common Responsibility, is caused through the willful or negligent act of an Owner, or the family, guests, employees, lessees, or invitee(s) of any Owner, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof, together with any Assessments for Non-Compliance levied by the Association for non-compliance and all costs of the collection shall be added to and become a part of the Assessment to which such Owner is subject and shall become a lien against the Lot of such Owner. Each Owner is responsible for the actions of and the compliance with these documents and the Regulations by the family, guests, lessees, employees or invitee(s) of that Owner and shall further be responsible for the payment of any Assessments levied for that non-compliance.

#### Section 4. ADDITIONAL REMEDIES.

(a) Enforcement of the Declaration, By-Laws of the Association, and the Regulations in addition to any other remedy set out herein, may be carried out by the Association, or the Owner through any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction in the Declaration, By-Laws, and Regulations established by the Declarant or the Association either to prevent or restrain violations, to recover damages or to compel a compliance to the terms thereof. Any failure by the Association, or any Owner to enforce any covenant or restriction herein contained or contained in the Declaration or By-Laws or to enforce any of the Regulations shall in no event be deemed a waiver of a right to do so thereafter. In addition to the foregoing, the Board of Directors of the Association, shall have the right wherever there shall have been built on any Lot any Structure which is in violation of the Declaration, Architectural Guidelines or Regulations to enter upon the Lot where such violation exists and summarily abate or remove the same at the expense of the Owner, if after written notice of such violation, it shall not have been corrected by the Owner within the time required by the notice of violation. Any such entry and abatement or removal shall not be deemed a trespass.

(b) The Association may, in addition to any other remedy, suspend the Common Area enjoyment rights of any Owner, family member, lessee, licensee, employee or guest, pet or animal of an Owner for an appropriate period of time to be determined on a case by case basis by the Board of Directors for any non-compliance with the provisions of the Declaration, the By-



Laws or of the Regulations, including, but not limited to, violations of Article II, Section 6, CONSTRUCTION IN ACCORDANCE WITH PLANS, Article II, Section 9, OFFENSIVE ACTIVITIES, Article II, Section 12, YARDS AND LANDSCAPING MAINTENANCE and Article VIII, OWNER'S MAINTENANCE RESPONSIBILITIES. The right, however, of a Member to ingress and egress over the roads and/or parking areas shall not be suspended.

(c) The Owner grants to the Association the right and permission to enter the Lot to remove or correct any violation of the Declaration, By-Laws or Regulations, including but not limited to, the maintenance of Lots or any Structure (as defined in Article I, Section 1) thereon, and the removal of abandoned automobiles considered by the Board to be in violation with the Regulations, Declaration, By-Laws or to be a nuisance.

(d) In addition to the remedies outlined in this Article, the Association may, but shall not be required to, enter upon any Lot(s) or Common Area, seize and either deliver to the appropriate governmental entity at the Owner's cost, any pet or other animal that is not in compliance with the Declaration, By-Laws, or the Regulations or that it deems to be a nuisance. Notice of non-compliance shall be given to any Owner whose pets or animals are not in compliance, except when said non-compliance creates an emergency as determined by the Board of the Association. The departure, while not under the restraint of a leash, of any pet or other animal from the Lot of its Owner, shall immediately constitute an emergency and there shall be no requirement for notice to be given.

(e) In addition to the remedies outlined above in this Article, the Association shall have the right to arrange for the removal, at the Owners expense, of any vehicle that is parked in violation of the Declaration or the Regulations after notice to the Owner of the Lot on or beside which the vehicle is parked. Notice of non-compliance shall be given to any Owner where the parking of a vehicle or vehicles, except when said non-compliance creates an emergency as determined by the Board of the Association. The parking of a vehicle which impedes the passage of any emergency vehicle or school bus, shall immediately constitute an emergency and there shall be no requirement for notice to be given.

## ARTICLE X GENERAL PROVISIONS

Section 1. NOTICE. Any notice required to be sent to any Member or Owner under the provision of this Declaration and service of any legal proceedings shall be deemed to have been properly sent and received when personally delivered or mailed, post paid, to the last known address of the person who appears as that person authorized to receive notice or to vote as shown on the records of the Association at the time of such mailing. It shall at all times be the responsibility of any Owner to file written notice with the Association of the name and address of the person authorized to receive notification from the Association or the Declarant as to Assessments, or infractions of the Regulations. Proof of the authority to receive notice and to vote shall be presented to the Association in the form of a certificate signed by the Owner of a Lot or HUD Settlement. Such certificate shall be deemed valid until revoked by a subsequent certificate. The Association does not have to send notice or service to any other address. If the

Owner does not file such certificate, the notice or service shall be sufficient if delivered, posted or mail post paid to the Lot

Section 2. SETTLEMENT STATEMENT AUTHORIZATION. The Owner by acceptance of the deed authorizes and directs the closing attorney to provide the Association with a copy of the Settlement Statement from the closing transferring the Lot and/or Dwelling to the Owner.

Section 3. EFFECTIVE DATE. This Declaration shall become effective upon its recordation in the office of The Register of Deeds for the county in which The Property is located.

Section 4. PAID PROFESSIONAL MANAGER. The Board of Directors, may employ a professional manager or managerial firm to supervise all work, labor, services, and material required in the operation and maintenance of the Common Area and in the discharge of the Association's duties throughout the Community.

Section 5. BINDING EFFECT. This Declaration shall inure to the benefit of and be binding upon the parties hereto, and the purchasers of Lots, their heirs, personal representatives, successors and assigns.

Section 6. WAIVER. The failure to enforce any rights, reservations, restrictions, or conditions contained in this Declaration, however long continued, shall not be construed to constitute a precedent or be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 7. ATTORNEY'S FEES AND COST. Should the Declarant or the Association employ counsel to enforce the Declaration, or the reasonable rules, regulations and policies established or amended by the Declarant or the Board of Directors from time to time because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for the Declarant's or the Association's counsel and other reasonable costs of collection, shall be paid by the Owner of such Lot or Lots in breach thereof.

Section 8. DRAINAGE. ALL GRADING, DURING AND AFTER CONSTRUCTION, SHALL AT ALL TIMES BE PERFORMED IN ACCORDANCE WITH (A) ANY APPLICABLE PORTIONS OF THE STORM WATER MANAGEMENT AND SEDIMENT CONTROL PLAN GRADING AND DRAINAGE PLAN, POLLUTION PREVENTION PLAN OR ANY OTHER APPLICABLE PLAN FILED FOR THE COMMUNITY AND BUILDINGS TO BE CONSTRUCTED WITHIN THE COMMUNITY WHICH CONFORMS TO REGULATIONS PROMULGATED BY THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND/OR (B) ANY OTHER APPLICABLE LEGISLATION, LAW, STATUTE OR ORDINANCE GOVERNING THE CONTROL OF DRAINAGE. ANY LOT OWNER, CO-OWNER OR BUILDER SHALL, BY ACCEPTANCE OF THE DEED TO A LOT, WHETHER THEY HAVE EXECUTED A "CO-PERMITTEE AGREEMENT" OR NOT, ASSUME THE RESPONSIBILITIES OF A CO-PERMITTEE AND BE BOUND TO THE ABOVE MENTIONED PLAN AND INDEMNIFY AND HOLD THE

DECLARANT, THE ASSOCIATION AND THE AUTHORITY HARMLESS FROM ANY AND ALL DEVIATIONS BY THE LOT OWNER, CO-OWNER OR BUILDER FROM THAT PLAN OR FROM THE LOT OWNER'S, CO-OWNER'S OR BUILDER'S FAILURE TO COMPLY WITH ANY APPLICABLE LEGISLATION, LAWS, STATUTES OR ORDINANCES.

ALL GRADING, TEMPORARY AND PERMANENT, SHALL BE PERFORMED IN A MANNER TO ALLOW FOR PROPER DRAINAGE AND TO CONTROL EROSION. OWNER AND OWNER'S BUILDING CONTRACTOR SHALL, DURING AND AFTER CONSTRUCTION, BE RESPONSIBLE FOR GRADING AND SURFACE DRAINAGE SO THAT EXCESSIVE SURFACE RUN-OFF WILL NEITHER CAUSE SEDIMENT LOSS TO WASH ONTO OR ACCUMULATE ON OTHER LOTS, OTHER ADJACENT PROPERTIES, OR ONTO THE STREETS OF THE COMMUNITY, NOR SHALL IT ADVERSELY AFFECT ANY STRUCTURE(S) ON THAT OWNER'S LOT OR ANY PORTION OF ANY ADJOINING LOT OR PROPERTIES. OWNER AND OWNER'S BUILDING CONTRACTOR SHALL PROVIDE RIP-RAP, GRAVEL EXITS, WATER BARS, BERMS, SEDIMENT FENCES, HYDROSEEDING AND SOD, OR OTHER FORMS OF EROSION CONTROL AS MAY BE REQUIRED BY THE DECLARANT OR AUTHORITY OR ANY GOVERNMENTAL AGENCY.

NOTHING CONTAINED IN THIS SECTION, IN THE DECLARATION OR THE BY-LAWS SHALL CREATE AN OBLIGATION OR A RESPONSIBILITY ON THE PART OF THE DECLARANT OR OF THE ASSOCIATION TO ENFORCE THE REQUIREMENTS SET OUT IN THIS SECTION. THE DETERMINATION OF WHAT CONSTITUTES EXCESSIVE RUNOFF IN THE VIEW OF THE DECLARANT OR OF THE ASSOCIATION, OF WHAT REMEDIES SHOULD BE PERFORMED BY ANY LOT OWNER OR CONTRACTOR AND OF WHETHER THE DECLARANT SHALL ENFORCE OR SHALL NOT ENFORCE THE AUTHORITY GRANTED HEREUNDER WITH RESPECT TO ISSUES ADDRESSED BY THE LANGUAGE IN THIS SECTION, UNLESS THEY BE INSTRUCTED TO DO SO BY A GOVERNMENTAL AUTHORITY AUTHORIZED TO DO SO, SHALL AT ALL TIMES BE THAT OF THE DECLARANT OR THE BOARD OF DIRECTORS OF THE ASSOCIATION, WHEN EMPOWERED. FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE LANGUAGE IN THIS SECTION SHALL AT NO TIME RELIEVE ANY OWNER OR CONTRACTOR OF THEIR DUTY TO COMPLY WITH THE TERMS OF THIS SECTION OR OF THEIR RESPONSIBILITY TO COMPLY WITH ANY GUIDELINES OR TO TAKE ANY AND ALL ACTIONS SET OUT BY ONE OR MORE GOVERNMENTAL AUTHORITY(S) THAT MIGHT LEGALLY SET GUIDELINES OR REQUIRE COMPLIANCE THERETO.

IN WITNESS WHEREOF, the Declarant hereto has by its duly authorized officers, set its hand and seal this 4th day of December, 2002.

DUTCH FORK DEVELOPMENT GROUP  
II, LLC



Ray R. Smith

BY:

By: Ann Frazier  
Its: MANAGING MEMBER

Novella Lemas

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

PROBATE

Personally appeared before me the undersigned witness and made oath that (s)he saw the within-named DUTCH FORK DEVELOPMENT GROUP II, LLC, by ANN FRAZIER MELTON Its MANAGING MEMBER sign, seal and, as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned, and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

Sworn to before me this 4th  
day of December, 2002.

Ray R. Smith

Notary Public for South Carolina

My Commission Expires: 11/9/08

Ray R. Smith