

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS FOR  
SUMMERFIELD SUBDIVISION**

THIS DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS FOR SUMMERFIELD SUBDIVISION is made as of this 21<sup>st</sup> day of July, 2000, by Octagon, L.L.C., A South Carolina Limited Liability Company (hereinafter referred to as "Declarant").

**BACKGROUND STATEMENT**

Declarant is the Owner of certain real property in Horry County, South Carolina, which is more particularly described on Exhibit "A" attached hereto and made a part hereof.

Declarant intends to develop on lands, including the real property above, a development to be known as Summerfield Subdivision (hereinafter referred to as the "Development"). Declarant intends by the Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the property now or hereafter made subject to this Declaration, by the recording of this Declaration and amendments thereto. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit corporation to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

The Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Restrictions and Protective Covenants, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The covenants, restrictions, and easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, devisees, successors and assigns and to the benefit of the Association.

**ARTICLE I**

**DEFINITIONS**

The following words and terms when used in this Declaration or any supplemental Declaration (unless the Contract shall clearly indicate otherwise) shall have the following meanings:

**Section 1.** "Additional Property" shall mean and refer to the real property described in Exhibit "B", which is attached hereto and incorporated herewith, and any future additional contiguous properties which may be added to Exhibit "B" (contiguity shall not be defeated or denied where the only impediment to actual "touching" is a separation caused by road, right-of-way or easement and such shall be deemed contiguous) and all improvements thereon.

**Section 2.** "Annual Assessments" or "Assessments" shall mean an equal Assessment established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Units.

**Section 3.** "Association" shall mean and refer to SUMMERFIELD SUBDIVISION Property Owners' Association, Inc., ("Association") a South Carolina non-profit corporation, its successors and assigns. The Articles of Incorporation of the Association are attached hereto as Exhibit "B" and the By-Laws are attached hereto as Exhibit "C".

**Section 4.** "Common Area" shall mean all the real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association includes the roadways and certain open areas shown on the plat referenced in Exhibit "A".

Declarant specifically does not convey certain Common Areas at this time, but shall, within ten (10) years from the date hereof, do so. Further, the recording and reference to said plat shall not in and of itself be construed as creating any dedications, rights or easements (negative reciprocal or otherwise), all such dedications, rights and/or easements being made only specifically by this Declaration, any amendment or supplement hereto or any deed of conveyance from Declarant, its successors or assigns, as developer.

**Section 5.** "Declarant" shall mean and refer to OCTAGON, L.L.C., a South Carolina Limited Liability Company, its successors and assigns as Developer.

**Section 6.** "Declaration" shall mean and refer to this Declaration of Restrictions and Protective Covenants for Summerfield Subdivision (as amended, renewed or extended from time to time) and all exhibits attached hereto.

**Section 7.** "Development" shall mean and refer to the properties that have been subjected to the Declaration of Restrictions and Protective Covenants for Summerfield Subdivision (as amended, renewed or extended from time to time) and all exhibits attached hereto.

**Section 8.** "Limited Common Area" shall mean any areas so designated either in this document or any subsequent document or declaration and shall mean and refer to certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all of the Owners and shall be available for use by other associations, which may be established for the maintenance and regulation of other developments established and created by Declarant, its successors or assigns, upon the tract of land described in Exhibit "A" or any additional land that may be subjected to this Declaration, from time to time.

**Section 9.** "Lot" shall mean and refer to any plot of land, with delineated boundary lines appearing on any recorded subdivision map of the Properties with the exception of any Common Area shown on a recorded map. In the event any Lot is increased or decreased in size by resubdivision, the same shall nevertheless be and remain a Lot for the purposes of this Declaration. This definition shall not imply, however, that a Lot may be subdivided if prohibited elsewhere in this Declaration. In the event that an Owner desires to combine two (2) or more adjoining Lots for the purpose of constructing and maintaining a single residence thereon, the resulting combined Lots shall from that date forward be deemed one Lot for the purposes of this Declaration.

**Section 10.** "Member" shall mean and refer to every person or entity who holds membership in the Association, as provided herein.

**Section 11.** "Neighborhood" shall mean and refer to each separately developed residential area subject to this Declaration whether or not governed by a separate owners' association. For

example, and by way of illustration and not limitation, each single family detached housing development shall constitute a separate neighborhood. In addition, each parcel of land intended for development as above shall constitute a neighborhood, subject to division into more than one (1) neighborhood upon development. The Declarant may designate in any subsequent amendment additional property to the terms and conditions of this Declaration that such property shall constitute a separate neighborhood or neighborhoods or shall be added to a pre-existing neighborhood; and, provided further, by a two-thirds (2/3) vote, the Board of Directors may also designate neighborhood status to any area so requesting or permit the merger of two (2) or more neighborhoods by recordation of any instrument specifying the boundaries thereof in the public records of Horry County, South Carolina. Such recordation shall not constitute an amendment to this Declaration nor require the formality thereof. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Owners' Association having jurisdiction over the property within the Neighborhood.

A separate Neighborhood Assessment will be established for each separately developed residential area which constitutes a separate neighborhood.

**Section 12.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit (as hereinafter defined in Section 17 of this Article) which is part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

**Section 13.** "Properties" shall mean and refer to the "Existing Property" described in Article II, Section I hereof, and any additions thereto as are or shall become subject to these Declaration and brought within the jurisdiction of the Association under the provisions of Article II hereof.

**Section 14.** "Setback" shall mean an area along the boundary of a Lot where no building shall be permitted, without the express written permission of Declarant.

**Section 15.** "Special Assessment" shall mean and refer to assessments levied in accordance with Article VI, Section 3 of this Declaration.

**Section 16.** "Supplemental Declaration" shall mean an amendment or supplement to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Supplemental Declaration may, but is not required to impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Supplemental Declaration to the provisions of the Declaration.

**Section 17.** "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, cluster-homes, patio or zero lot line homes and single family detached homes on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used and defined as hereinafter provided or as provided in a Supplemental Declaration covering all or part of the Properties. The term shall include all portions of the lot owned including any structure thereon. In the case of a structure that contains multiple units, each unit shall be deemed to be a separate Unit.

**Section 18.** "Voting Member" shall mean and refer to the representative selected by the Members of each Neighborhood to be responsible for voting on their behalf for election of Directors, whose duties shall include amending this Declaration or the By-Laws and all other matters provided in this Declaration and in the By-Laws. The Voting Member from each Neighborhood shall be the senior elected officer (e.g. Neighborhood Committee Chairman or Owners' Association President) from the Neighborhood; the alternative Voting Member shall be the next most senior officer. The Voting Member may also be a Director of the Property Owners' Association. On all matters requiring a vote of the Voting Members, except election of Directors, each Voting Member shall cast one (1) vote for each Unit it represents, unless otherwise specified in the By-Laws of this Declaration. With respect to election of Directors, each Voting Member shall be entitled to cast one (1) equal vote for each directorship to be filled, as more particularly described in the By-Laws.

**ARTICLE II**

**PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE  
JURISDICTION OF SUMMERFIELD SUBDIVISION PROPERTY OWNERS'  
ASSOCIATION, INC.**

**Section 1. Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and within the jurisdiction of the Association is located in Horry County, South Carolina, and described in the attached Exhibit "A".

**Section 2. Merger or Consolidation.** Upon a merger or consolidation of any association referred to herein with any other association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with the Properties.

**ARTICLE III**

**PLAN OF DEVELOPMENT OF ADDITIONAL PROPERTY**

Declarant hereby reserves the option, to be exercised in its sole discretion, to submit at any time, or 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 Development. Declarant reserves the right to plan, design, develop, construct, maintain and manage the Additional Property Multi-Family Areas, and any unsold Units as Declarant deems necessary or convenient for its purposes, except as otherwise expressly stated in this Declaration, including without limitation

the right to expand the number, size and density of the unsold Units, the Common Areas, the Multi-Family Areas, Recreational Amenities, if any, and the Additional Property. This option may be exercised by Declarant in accordance with the 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.

This option to add additional property/phase(s) may be exercised from time to time during a period of twenty-one (21) years from the date of recordation of this Declaration; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such twenty-one year period by executing and filing an agreement evidencing such termination in the Office of the Register of Deeds for Horry County, South Carolina, and, except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of such twenty-one (21) year period.

The legal description of the Additional Property is set forth on Exhibit "B", attached hereto and incorporated herewith; 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 Development. The 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.

If the Additional Property or any portion thereof is added to the Development, any improvements constructed therein and any Units constructed thereon, existing at the time of the addition, shall be deemed to comply in all respect to the standards and restrictions set forth herein and any future improvements or Units shall be constructed in accordance with the standards and restrictions set forth herein.

If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate and restrict the boundaries of the Unit, Recreational Amenities, if any, and Multi-Family Areas, as well as the Common Areas, if any, to be added to the Development in connection therewith.

Should the option to add the Additional Property or any

portion of in not be exercised within the term specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect. DECLARANT SHALL NOT BE OBLIGATED TO IMPOSE ON THE ADDITIONAL PROPERTY OR ANY PORTION OF IT ANY COVENANTS, CONDITIONS, OR RESTRICTIONS THE SAME OR SIMILAR TO THOSE CONTAINED HEREIN, AND SAID PROPERTY WILL BE FREE OF ANY COVENANT OR CONDITION WHATSOEVER UNLESS OTHERWISE AFFIRMATIVELY IMPOSED.

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 Article III 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 Horry County, South Carolina, together with a revision of or an addition to the Site Plan showing the Additional Property or such portion or portions thereof as are being added to the Development by such amendment, as well as the Units, Recreational Amenities, Common Area, Multi-Family Areas, if any, or other types of Property located within the Development.

DECLARANT SHALL CONVEY TO THE ASSOCIATION THE COMMON AREAS DESIGNATED BY DECLARANT UPON THE PLATS OR THE DEVELOPMENT, BE IT RECREATION AMENITY OR OTHERWISE, AS DESCRIBED IN EXHIBIT "A" OR EXHIBIT "B", (IF THE ADDITIONAL PROPERTY OR ANY PORTION THEREOF IS SUBMITTED TO THE DECLARATION), AT SUCH TIME AS DECLARANT, IN ITS SOLE DISCRETION, SHALL DETERMINE, BUT NOT TO EXCEED TWENTY-ONE (21) YEARS FROM THE DATE OF EXECUTION HEREOF. ANY SUCH CONVEYANCE SHALL 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 AND/OR THE ADDITIONAL PROPERTY, AND ANY EXCEPTIONS WHICH WOULD BE DISCLOSED BY AN ACCURATE SURVEY OR PHYSICAL INSPECTIONS OF SUCH PARCEL(S).

Any such amendment shall expressly submit 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 than 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 thereof is added to the Development, then from and after the addition to the Development of the Additional Property or such portion or portions by such amendment to this Declaration, the number of votes in the Association shall be modified to include the Units to be located on the Additional Property or such portion or portions of it as are Units in the Development, and the total number of votes in the Association shall be increased by the number of Units added as determined by the formula provided in this Declaration for the voting rights for any Unit or Declarant-owned facility located on the Additional Property or such portion or portions thereof as are added.

#### **ARTICLE IV**

#### **MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Every Owner of a Unit, 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 Unit which is subject to assessment.

**Section 2.** The voting rights of the membership shall be appurtenant to the ownership of the Units. There shall be two classes of Members with respect to voting rights.

(A) **Class I Members.** Class I Members shall be all Owners, except Class II Members as the same is hereinafter defined. Each Class I Member shall be entitled to one (1) vote for each Unit owned. When more than one person owns an interest (other than a leasehold or security interest) in any Unit all such persons shall be members and the voting rights appurtenant to said Unit shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any one Class I Member.

(B) **Class II Members.** The sole Class II Member, shall be Declarant. The Declarant shall be entitled to four (4) votes for each Unit owned by it. The Class II Membership shall cease to exist and shall be converted to Class I Membership upon the happening of the first of the following:

1. When seventy-five percent (75%) of the Units have been conveyed to Class I Owners by Declarant, or

2. on January 1, 2005, or
3. in the discretion of Declarant.

## ARTICLE V

### PROPERTY RIGHTS IN THE COMMON AREAS AND LIMITED

#### COMMON AREAS

**Section 1. Member Easements.** Each Member, their tenants, agents and invitees shall have permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the roadways from time to time laid out on the Common Areas, for use in common with all other Members, their tenants, agents, and invitees. The portions of the Common Areas not used from time to time for roadways shall be for the common use and enjoyment of the Members of the Association, and each Member, their tenants, agents and invitees shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts as may be regulated by the Association. In the case of a Limited Common Area, the use of the Limited Common Area is subject to the rights of others who may be entitled to the use thereof. Further, each Member, their tenants, agents and invitees shall have a non-exclusive permanent and perpetual easement for ingress and egress over and across any roads as shown on a plat recorded in Plat Book 171 at Page 076, in the office of the Register of Deeds for Horry County, South Carolina.

**Section 2. Easements Appurtenant.** The easements provided in Section 1 of this Article shall be appurtenant to and shall pass with the title to each Unit.

**Section 3. Public Easements.** Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual non-exclusive easement for ingress and egress over and across the Common Areas.

**Section 4. Declarant's Easement.** Declarant reserved unto itself and its successors and assigns as Developer the right of ingress and egress over all roads and streets within the Properties whether existing or constructed in the future for access to any areas which adjoin or are a part of the Properties, for purposes of

construction, sales and development. The easement herein reserved shall be in addition to, and not in lieu of, any other easements to which Declarant, its successors and assigns, may be entitled. This easement shall exist so long as Declarant retains any ownership interest in the Property submitted or to be submitted to this Declaration.

**Section 5. Maintenance by Association.** The Association shall at all times maintain in good repair and repair or replace as often as necessary, all Common Areas as designated on plats of the Development, recorded from time to time, specifically including, but not limited to, the roadways, drainage ditches and swells, street lighting fixtures, landscaping and amenities (except utilities) situated on the Common Areas. The Board of Directors acting on a majority vote shall order all work to be done and shall pay for all expenses including all electricity consumed by the lighting located in the Common Areas and Limited Common Areas and all other common expenses. All work pursuant to this Section 5 of Article V and all expenses hereunder shall be paid through assessments imposed in accordance with Article VI. Excluded herefrom shall be paving and maintenance of individual Unit driveways which shall be maintained by each Owner. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to a governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

**Section 6. Utility Easements.** Use of the Common Areas for utility easements shall be in accordance with the applicable provisions of this Declaration.

**Section 7. Delegation of Use.**

(a) **Family.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article V may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties.

(b) **Tenants.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article V may be delegated by the Owner to any tenants who occupy a residence within the Properties.

(c) **Guests.** Recreational facilities, if any, situated upon the Properties may be utilized by guests of Owner and tenants,

subject to the rules and regulations of the Association governing said use and as established by its Board of Directors.

**Section 8. Ownership.** The Common Areas as shown on recorded plats of the Properties shall be conveyed to the Association by Declarant free and clear of all encumbrances, except for the provisions of this Declaration and any utility, drainage and other general easements of record, on or before January 1, 2005, or earlier, in the discretion of Declarant. The Association shall accept such conveyance. Upon conveyance, it is intended that all real estate taxes against the Common Areas shall be assessed against and payable by the Association, as well as any personal property taxes on any personal property owned by the Association. Declarant shall have the right from time to time to enter upon the Common Areas and adjoining properties during periods of construction for the purpose of construction of any facilities on the Common Areas which Declarant elects to build. The Owner of a Unit shall have no personal liability for any damage for which the Association is legally liable or arising out of or connected with the existence or use of any Common Areas or any other property required to be maintained by the Association, unless said Owner through his or her or its own negligence causes said damage. Limited Common Areas may, from time to time, be conveyed to the Association subject to the rights of others as set out in Article I, Section 8.

**Section 9. Maintenance of Limited Common Areas and Entrance Road.** The Declarant, for itself and its successors and assigns as developer (and not as a Unit purchaser in the normal course of its business) hereby covenants that it will require in the initial documentation of any association of owners or any owners individually, if no association be involved to whom it grants or conveys a right of use thereof, the contribution of a pro-rata share of maintenance expenses toward the maintenance and upkeep of any Limited Common Areas created hereunder and, further, toward the maintenance and upkeep, specifically, of the roadways over which easements of ingress and egress have, in this Declaration, been granted. "Pro-rata" shall, for the purpose of this Section, be based upon the number of Units which may be created by Declarant and be so designated by the Declarant in the documents, creating such Units. This Section 9 of Article V is not intended to and shall not be construed as requiring the Declarant to create any further developments nor as Declarant's guarantee of payment on behalf of any such Associations or Units.

**ARTICLE VI**

**COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Unit owned within the Properties, hereby covenants and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments as charged, (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and (3) fines imposed upon violating Unit Owners for any violations of this Declaration, as it may be hereafter amended and the rules and regulations of the Association.

**Section 2. Purposes of Assessments.** The assessments levied by the Association shall be used to promote the health, safety and welfare of the residents of the Properties and for the acquisition, improvement and maintenance of Properties, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area, including but not limited to, the cost of repair, replacement and additions to the Common Areas, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed against the Common Areas, the procurement and maintenance of insurance, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

**Section 3. Maintenance of Owner.** The Owner shall maintain the structures and grounds of each Unit at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Association may at its option, after giving the Owner ten (10) days' written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut or re-sodded, as the case may be, when and as often as the same is necessary in its judgement, and have dead trees, shrubs and plants removed from such Unit, and replaced; and all expenses of the Association for such work and materials shall constitute an assessment and charge against the Owner and the Unit on which the work was done, secured by a lien against the Unit as herein provided.

Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at

its option, after giving the Owner thirty (30) days' written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner.

The cost of any of the aforementioned work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Unit and shall constitute an assessment against the Owner and the Unit on which the work was performed and secured by a lien against the Unit as herein provided. Any entry upon the property for maintenance purposes shall not be deemed a trespass.

**Section 4. Capital Improvements.** Funds necessary for capital improvements and other designated purposes relating to the Common Areas under the ownership of the Association may be levied by such Association as special assessments, upon the approval of a majority of the Board of Directors of such Association and upon approval by the Voting Members representing two-thirds (2/3) of the Members of such Association voting at a meeting or by ballot as may be provided in the By-Laws of such Association. The Board of Directors of the Association, however, may levy a special assessment for the entire Association of up to Five Thousand and no/100 Dollars (\$5,000.00) or Five percent (5%) of the annual budget, whichever is greater, without the approval of the membership.

**Section 5. Capital Contribution.** Each Owner of a Unit shall be assessed at closing an amount equal to one-half (1/2) of the annual assessment for start-up costs which shall be designated a Capital Contribution. If any adjoining Lots are combined at the time of closing as provided in Article VIII, Section 1, the Owner of such Lot shall be assessed one (1) Capital Contribution.

**Section 6. Annual Assessments.** The Annual Assessments provided for in this Article VI shall commence upon the closing of each Unit.

The Assessments shall be payable in monthly, quarterly, semi-annual or annual installments as determined periodically by the Board of Directors of the Association. Each Unit shall be assessed an equal Annual Assessment.

The assessment amount may be changed at any time by said Board from any other assessment that is adopted. The assessment shall be for the calendar year, but the amount of the annual assessment to be levied during any period shorter than a full calendar year shall

be in protection to the number of months remaining in such calendar year.

**Section 7. Special Assessment(s) Due Date.** The due date of any special assessment(s) under Section 4 hereof shall be fixed by the Board.

**Section 8. Neighborhood Assessments.** Neighborhood assessments shall be imposed by the Neighborhood Association and shall be levied equally against all Units in the neighborhood with any assessments for the use and benefit of a particular Unit or Units levied on a pro rata basis among the Units particularly befitted.

**Section 9. Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against the Units subject to the Association's jurisdiction for each assessment period at least thirty (30) days in advance of such date or period, and shall, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and be open to inspection by any Owner. Any increase in the Annual Assessment applicable to the Units which is less than an increase of thirty percent (30%), over the immediately preceding year's assessment may be made by the Board of Directors without the consent or approval of the Members and any such increase that exceeds thirty percent (30%), excluding increases from expenditures for insurance, reserves, utilities and Acts of God, shall be effective only if approved by at least two-thirds (2/3) of the Voting Members representing votes appurtenant to each Class of Units (Class I and Class II).

Written notice of the assessment shall thereupon be sent to every Owner subject thereto; however, failure of the Association to send said notice shall not relieve the Owner from the responsibility of payment.

The Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid and the Association may assess a reasonable charge for issuing said certificate.

The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations for property management services.

The Association shall have all other powers provided in this Declaration, its Articles of Incorporation and By-Laws, as well as all powers provided in the Non-Profit Act of South Carolina, Section 33-31-101 et seq., Code of Laws of South Carolina (1976), as amended.

**Section 10. Effect of Non-Payment of Assessment; Personal Obligation of the Owner; Lien; Foreclosure; Remedies of the Association.** If the assessments are not paid on the date when due (being the date specified in Section 6 or 7 hereof, as applicable), then such assessment shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. Every Purchaser of a Unit shall be required to determine the status of the Unit Assessment at the time of purchase and shall be deemed to assume any outstanding assessment not paid by the Seller at the time of closing.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date when due at the highest allowable rate of interest. The Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the property on which the assessment is unpaid and may foreclose said lien, in the same manner as a mortgage is foreclosed upon in the State of South Carolina. The Association shall also be entitled to the appointment of a Receiver in any such foreclosure action to collect rents to apply against the delinquent assessments. Or, the Association may pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment attorneys' fees and costs incurred by the Association to collect the delinquent assessments. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorneys' fees in connection with any appeal of any such action.



In addition to the rights of collection of assessments stated in this Section 10, the Owner and all persons acquiring the title to or an interest in a Unit as to which the assessment is delinquent, excepting persons acquiring title by operation of law and by judicial sales, shall not be entitled to the enjoyment and use of recreational facilities, if any, until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid.

It shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder.

**Section 11. Subordination of the Lien to Mortgages.** The lien of the assessments provided for in the Article VI shall be subordinate to the lien of any mortgage recorded prior to recordation of the claim of lien, which mortgage encumbers the Unit to any institutional lender and which is now or hereafter placed upon any property subject to assessments; provided however, that any mortgagee when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and all persons claiming by, through or under such purchaser or mortgagee shall hold title subject to the liability and lien of any assessment becoming due after such foreclosure. Any unpaid assessment which cannot be collected as a lien against any Unit by reason of the provisions of this Section 11, shall be deemed to be an assessment divided equally among, payable by, and a lien against all Units subject to assessments by the Association, including the Units as to which the foreclosure took place.

**Section 12. Access at Reasonable Hours.** For the purposes solely of performing the maintenance authorized by this Article, including without limitation all of the maintenance and work permitted under Section 3 of this Article, the Association, through its duly authorized agents or employees or independent contractors, shall have the right to enter upon any Unit at reasonable hours on any day except Sunday, or at any time in case of an emergency. Such entry shall not be deemed a trespass.

**Section 13. Effect on Declarant.** Notwithstanding any provision that may be contained to the contrary in this instrument, for as long as Declarant is the Owner of any Unit in the Properties, the Declarant shall not be liable for assessments against such Unit, provided that Declarant funds any deficit in operating expenses of the Association. Declarant may at any time commence paying such

assessments as to Units that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association. The Declarant shall have the right to select its method of payment on an annual basis.

#### **ARTICLE VII**

##### **ARCHITECTURAL REVIEW**

Except for original and initial construction of improvements by the Declarant upon the Properties, which such construction is and shall be exempt from the provisions of this Article, no building, wall, fence, ornamentation or other structure or improvements of any nature shall be erected, placed or altered upon the Properties until the construction plans and specifications showing the location of the structure and improvements and landscaping have been approved in writing by the Architectural Review Board. Under no circumstance shall a mobile home be allowed to be permanently or temporarily placed upon or affixed upon any of the Properties, except a sales trailer(s) which may be used by Declarant for sale purpose pursuant to Article VIII, Section 1. Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered upon the Properties only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Review Board is deemed sufficient. Any change in the appearance of any building, wall, fence or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval. The Architectural Review Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Article. The Architectural Review Board shall be appointed by the Class II members of the Association. At such time as the Class II membership expires, the Architectural Review Board shall be appointed by the Board of Directors of the Association.

A majority of the Architectural Review Board may designate a representative to act for the Architectural Review Board and employ, with the Board of Director's approval, personnel and consultants to act for it. In the event of death, disability or

resignation of any member of the Architectural Review Board, the Board of Directors of the Association shall have the authority to designate a successor. The members of the Architectural Review Board shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Review Board shall act on submissions to it within thirty (30) days after receipt of same, or else the request shall be deemed approved. Requests and submissions shall, however, be in such form and contain such information as the Architectural Review Board may require prior to its being required to act.

The Architectural Review Board may establish a fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers, attorneys or the like.

Any Owner may appeal the decision of the Architectural Review Board, provided that all parties involved comply with the decision of the Architectural Review Board until such time, if any, as the Board of Directors amends or reverses the Architectural Review Board's decision. Appeal petitions must be legibly written, state the ground for appeal and be submitted to the Board of Directors within ten (10) days of the decision of the Architectural Review Board. The Board of Directors shall act upon the appeal by amending, reversing or confirming the decision of the Architectural Review Board within thirty (30) days of receipt of the petition. The Board of Directors' decision shall be by majority vote. Any owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief.

The paint, coating, stain and other exterior finishing colors on all buildings may be maintained as that originally installed, without prior approval of the Architectural Review Board, but prior approval by the Architectural Review Board shall be necessary before any such exterior finishing color is changed.

No building shall be more than three (3) stories or a height of thirty-five (35') feet.

**ARTICLE VIII**

**USE RESTRICTIONS**

**Section 1. Land Use.** Except for areas designated for commercial use, the Properties shall be used for residential purposes only. Declarant may maintain a sales office, models, property management office, design center office, and construction office upon or in one or more Units and/or Common Area until all Units to be located on the Properties and additions thereto have been sold. No Lot may be subdivided or its boundaries changed where the result would be a decrease in the size of any Lot. In the event that an Owner combines two (2) or more adjoining Lots for the purpose of constructing a single residence thereon, from that date forward, the resulting Lot shall not be subdivided nor its boundaries changed so as to result in a decrease in the size of the Lot.

**Section 2. Nuisance.** No noxious, illegal or offensive activity shall be conducted upon the Properties or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

**Section 3. Pets.** Owners may keep as pets companion pets such as birds, domesticated cats, fish, dogs and other small mammals. No Owner may keep exotic cats, non-human primates, horses or other farm livestock or zoo type animals on the Properties. Pets must be on a leash or carried when on Common Areas. It shall be the Owner's obligation to dispose of waste material from pets. The Board of Directors of the Association shall have the right to order the removal of any pet which, in the Board's sole discretion, is considered a nuisance, and the same shall be done without compensation to the Owner. In such event, the Board shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Properties. A pet not on a leash shall be deemed a nuisance. Failure to clean the waste material from a pet shall also be deemed a nuisance.

**Section 4. Gardens.** No fruit or vegetable gardens shall be permitted to be planted in the front or side yard areas of the Properties.

**Section 5. Temporary Structures.** No structure of a temporary nature shall be erected or allowed to remain upon the Properties unless and until permission for the same has been granted by the

Architectural Review Board or its designated agent or representative, provided however, the Declarant may use a model or construction trailer while selling or constructing dwelling units upon the Properties.

**Section 6. Use of Common Area.** The Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Association.

**Section 7. Access to Units.** In addition to easements granted elsewhere, the Association, its agents or employees shall have access to all Units from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area, or facilities situate upon such Unit which serve another Owner's Unit. The Association or its agent shall also have access to each Unit at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or another Unit.

**Section 8. Recreational Vehicles, Boats, and Trailers.** No campers, trucks, recreational vehicles, trailers, boats, motorbikes, motorcycles or tractors may be parked or kept within the Properties, unless parked within an enclosed garage or within area(s) designated for such use by the Association. Provided, however, that this provision shall not be implied to obligate either Association or Declarant to provide such areas.

**Section 9. Signs.** No signs or other advertising devices shall be displayed upon the Properties which are visible from the exterior of the Unit thereon or on the Common Area, or in the facilities thereon, without prior written permission of the Association. Declarant, however, may post temporary "for sale" or other marketing related signs on the Properties until such time as all Units owned by Declarant have been sold. Further, temporary signs designating mortgage lenders and construction companies may be placed upon the Properties being financed or improved by them until such time as all Units owned by Declarant have been sold.

**Section 10. Mailboxes.** No mailbox may be placed upon the Properties until it has been approved by the Architectural Review Board.

**Section 11. Garbage Disposal.** All garbage shall be stored within the residence of each Owner or in storage facilities

provided for said residence at the time same is constructed. The storage area must be visually screened in order to conceal it from view from the road and adjacent properties. No Owner may change or supplement the garbage disposal facilities provided for such Owner's residence on the date of completion of construction thereof unless the Board of Directors of the Association shall first approve in writing the change or addition to the method of storage. It is provided, however, that if the public health authorities, or other public agency, shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with obligatory public rule and regulations.

**Section 12. Antennas and Satellite Dishes.** No exterior television or citizens band radio antennas shall be permitted upon the Properties nor shall any "satellite dishes" be permitted upon the Properties without the express written permission of the Architectural Review Board. The Declarant, its successors and assigns, may locate such facilities upon the Common Areas.

**Section 13. Regulations.** Reasonable regulations governing the use of the Common Areas shall be promulgated by Declarant and such rules and regulations may be amended from time to time by the Board of Directors of the Association. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.

**Section 14. Fences.** No chain link fences shall be permitted upon the Properties. No fences of any kind may be located upon the Properties without the prior written permission of the Architectural Review Board.

**Section 15. Vehicle Storage.** No inoperative vehicle or vehicle in a state of noticeable disrepair shall be kept or stored upon the Properties nor may any repair work be done to any motor vehicle, boat or trailer upon the Properties except for very minor repair work.

**Section 16. Parking.** Each Owner shall provide paved space for off-street parking. No parking shall be allowed on any unpaved space.

**Section 17. Water and Sewer Systems.** No individual water or sewer system or irrigation well shall be installed upon the Properties. Each Unit must be connected to a public water and/or sewer system in lieu of any individual system whatsoever. Water may

not be diverted or taken from lagoons or irrigation wells for yard maintenance or for any purpose.

**Section 18. Oil and Mining Operations.** No oil drilling, oil development operations, oil refining or mining operations of any kind shall be permitted upon the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Properties. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties.

**Section 19. Lighting.** No mercury vapor or similar lights which are situated upon poles similar to street lights shall be permitted upon the Properties without the prior written consent of the Architectural Review Board which may decline such permission in the exercise of its sole discretion and may, but shall not be obligated to, consider the feelings and concerns of adjoining owners.

**Section 20. Trees.** Except as may be approved by the Architectural Review Board, no tree four inches (4 ") in diameter or ten feet (10') in height shall be cut, removed or intentionally damaged upon the Properties unless such tree interferes with construction of improvements, is dead or diseased, or presents a hazard to persons and property.

**Section 21. Mobile Homes.** Under no circumstances shall a mobile home be allowed to be permanently or temporarily placed upon or affixed to the Properties, except a sales trailer(s) which may be used by Declarant, its successors or assigns for sale and construction purposes pursuant to Article VIII, Section 1.

## **ARTICLE IX**

### **EASEMENTS AND SETBACKS**

**Section 1.** Easements for the installation and maintenance of water lines, gas lines, telephone, cable television lines, electric power lines, sanitary sewer and drainage facilities and for other utility installations are reserved as outlined on the recorded plats of Summerfield as recorded from time to time and/or may be granted by Declarant, its successors and assigns. In addition, the Association may reserve and grant additional easements for the installation and maintenance of sewerage, cable, utility and draining facilities over the Properties. Said easement reservations and grants shall be either as set forth on the

subdivision plats as recorded from time to time or within the easement areas designated in this Article hereafter in Section 3. Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, the Association shall have the continuing right (but not the obligation) and easement to maintain all sewer and water lines located upon the Properties.

Section 2. There is reserved across the front of each lot or condominium tract, as the case may be, an "Easement Area" or "Setback" as shown on the plats of the Properties, a portion of which area represents the area which may be needed for a street right-of-way should the Association elect to dedicate the abutting Common Area street or road to the public authorities. By acceptance of a deed to a Unit, every owner, his, her, or its successors and assigns, herein and hereby appoints the Association as such Owner's attorney-in-fact for the purpose of deeding, transferring and/or dedicating said "Easement Area" to the proper public authorities for street dedication purposes pursuant to, and subject to, such terms and conditions, if any, as may be contained in the dedication agreement respecting the portion of the street or road which is comprised of a Common Area.

Section 3. Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right on, over, and under the ground to erect, maintain and use poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, C.A.T.V., security cable equipment, telephone equipment, gas, sewer, water or other private or public convenience or utilities.

Said easement areas, which constitute building setbacks, shall be as follows: the street front setback shall be twenty-five feet (25'); each side lot setback shall be ten feet (10'); the rear setback line shall be fifteen feet (15'); and the side setback on corner lots shall be fifteen feet (15').

Moreover, the Declarant, its successors or assigns may cut at its own expense, drainways for surface water wherever and whenever such action may appear to the Declarant, its successors or assigns



to be necessary in order to maintain reasonable standards of health, safety and appearance utilizing the easements and setbacks outlined above. The use of these easement areas by Declarant, its successors and assigns, shall not be deemed a trespass.

## **ARTICLE X**

### **INSURANCE AND CASUALTY LOSSES**

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area and may, but shall not be obligated to, by written agreement with any Neighborhood Committee ( as defined in the By-Laws), assume the responsibility for providing the same insurance coverage on the Properties contained within the Neighborhood. If blanket all-risk coverage is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

In addition to casualty insurance on the Common Area, the Association may, upon request of a Neighborhood, but shall not under any circumstances be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance in such form as the Board of Directors deems appropriate for one hundred percent (100%) of the replacement cost of all structures located on Units within the Neighborhood and/or common property of the Neighborhood Association, and charge the costs thereof to the Owners of Units within the benefitted Neighborhood as a Neighborhood assessment, as defined in Article I hereof. All such insurance policies shall be for the full replacement costs and shall provide for a certificate of insurance for each member insured to be furnished to the Association or Neighborhood Association, as applicable.

If reasonably available, the Board shall also obtain a public liability policy covering the Common Area, insuring the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. If reasonably available, the public liability policy shall have at least a One Million and no/100 Dollar (1,000,000.00) single person limit as

respects bodily injury and property damage, a Three Million and no/100 Dollar (\$3,000,000.00) limit per occurrence, if reasonably available, and a Five Hundred Thousand and no/100 Dollar (\$500,000.00) minimum property damage limit.

Unless higher insurance requirements are contained in any covenants or restrictions for any Neighborhood, the following shall apply: insurance obtained on the Properties contained within any Neighborhood, whether obtained by such Neighborhood Association or the Association, shall meet the requirements of this Section 1. Costs of such coverage shall be a charge to the Members residing within such Neighborhood.

Premiums for all insurance on the Common Area shall be common expenses of the Association. Premiums for insurance provided to Neighborhoods shall be charged to those Neighborhoods. Any policy obtained by the Association may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance, and in the event of multiple parties the deductible shall be allocated in relation to the amount of each party's loss bears to the total.

The cost of insurance coverage obtained by the Association for the Common Area shall be included in the annual assessment budget, as described in Article VI, Section 9.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in South Carolina which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of Owners and their Mortgagees as their interests may appear; all policies secured at the request of a Neighborhood Association shall be for the benefit of the Owners and Mortgagees of their Units

within the Neighborhood.

Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants or their mortgagees.

All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Horry County, South Carolina area.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the director's best business judgement but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

The Association shall purchase officers' and directors liability insurance, if reasonably available. Every Director and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon said Director or Officer in connection with any proceeding to which he or she may be a party or in which he or she may become involved, by reason of their being or having been a Director or Officer of the Association, whether or not he or she is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties. Further, in the event of any claim for reimbursement or indemnification hereunder is based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The forgoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

Section 2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Unit(s) and structures constructed thereon, meeting the same requirements as

set forth in Section 1 of this Article for insurance on Common Areas, unless the Neighborhood Association in which the Unit is located or the Association carries such insurance (which they are not obligated to do). Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising the Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans as approved pursuant to Article VII of this Declaration. In the event that the structure is totally destroyed and the Owner determines to not rebuild or reconstruct, the Owner shall clear the Property of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

A Neighborhood Committee may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Unit and the standard for returning the Unit to its natural state in the event the Owner decides not to rebuild or reconstruct.

Section 3. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interest may appear shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgages of a Unit and may be enforced by such mortgages.

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds shall be disbursed in the manner provided for disbursement of excess proceeds in Section 3(a) of this Article X.

#### Section 4. Damage and Destruction

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Unless otherwise required by South Carolina law, any damage or destruction to the Common Area or the Common Property of any Neighborhood Association shall be repaired or reconstructed unless the Voting Members representing at least seventy-five percent (75%) of the total vote of the Association, if Common Area, or the Neighborhood whose common property is damaged, shall decide within sixty (60) days after the casualty to not repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgages shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the affected portion of the Properties shall be restored to their natural state and maintained by the Association, or Neighborhood Association, as applicable in a neat and attractive condition.

Section 5. Repair and Reconstruction. If the insurance proceeds received by the Association are not sufficient to defray the cost of such repair or reconstruction, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in proportion to the number of Units owned, provided, however, if the damage or destruction involves the common property of a Neighborhood Association shall be subject to such assessment. Additional assessments may be made

in like manner at any time during or following the completion of any repair or reconstruction.

Furthermore, if the loss is occasioned as a result of the negligent acts of an Owner, their invitees or guests, the cost of repair or reconstruction, less any insurance proceeds, shall be assessed against said Owner and the failure to pay said sums shall be considered as a delinquent assessment under this Declaration.

#### **ARTICLE XI**

#### **NO PARTITION**

Except as is permitted in this Declaration or any amendment hereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any such judicial partition, unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring title to real property which may or may not be subject to this Declaration.

#### **ARTICLE XII**

#### **FINANCIAL PROVISIONS**

Section 1. Approval of Owners and Holders of First Mortgages. Unless at least sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of the holders of first mortgages which are owned or insured through the FNMA, FHA or similar agency on Units located within the Properties, have given their prior written approval, the Association shall not:

(a) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit Owner, or of the voting rights of the Owners.

(b) Change the responsibility for maintenance and repairs as may otherwise be set out herein.

© Impose any restriction upon an Owner's right to sell his Unit.

Section 2. Books and Records. Any Owner of holder, insurer, or guarantor of a first mortgage on any Unit will have the right to examine the books and records of the Association, current copies of

this Declaration, the By-laws of the Association and Rules and Regulations during any reasonable business hours and upon reasonable notice. Any holder of a first mortgage shall be entitled, upon written request, to a copy of the Association's financial statement for the previous year.

Section 3. Payment of Taxes and Insurance Premiums. The Owners and holders of first mortgages on Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Are and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefor from the Association.

### **ARTICLE XIII**

#### **RULES AND REGULATIONS**

Section 1. Compliance by Owners. Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of an Owner to comply with such restrictions, covenants or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In the event that the Association must institute an action to enforce the provisions of this Declaration and its related Articles or By-Laws or the rules or regulations duly adopted by the Association, all costs and expenses, including reasonable attorney fees shall be the responsibility of the offending Owner. Failure of Association to enforce any covenant or restriction shall not be deemed a waiver or the right to do so thereafter.

Section 3. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner his family, guests, invitees, lessees or employees to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to:

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged



violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and sanction, if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner of occupant responsible for the violation which abatement is sought shall pay all costs, including reasonable attorney's fees, actually incurred.

(e) Fines. The Board of Directors may impose as special assessments against the Unit owned by the Owner such fines as the Board may deem prudent.

(f) Payment of Fines. Fines shall be paid no later than thirty (30) days after notice of the imposition of assessment of the fine(s).

(g) Collection of Fines. Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth in Article VI.

(h) Application of Fines. All monies received from fines shall be allocated as directed by the Board of Directors.

(i) Non-Exclusive Remedy. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner shall be deducted from or offset against any damage which the Association may otherwise be entitled to recover by law from such Owner.

#### **ARTICLE XIV**

##### **GENERAL PROVISIONS**

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 2. 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 shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by the Owners of not less than fifty-one percent (51%) of the Units, or as provided in Article XV herein. Any amendment must be properly recorded.

Section 3. Litigation. No judicial or administrative proceeding shall be condemned or prosecuted by the Association unless approved by a vote of sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the membership and a majority of the Board of Directors. In case of such a vote, and notwithstanding anything contained in this Declaration or Articles of Incorporation or By-Laws of the Association to the contrary, a Board member shall

not vote in favor of bringing or prosecuting any proceeding unless authorized to do so by a vote of sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of all members of the Neighborhood represented by the Board member. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including without limitation, the filing of liens and the foreclosure of said liens), (b) the imposition and collection of personal assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims or cross-claims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings provided above.

#### **ARTICLE XV**

##### **AMENDMENT OF DECLARATION WITHOUT APPROVAL OF OWNE**

The Declarant, without the consent or approval of any other Owners, shall have the right to amend this Declaration to (1) correct any scrivener's or typographical errors and (2) conform the Declaration and appended documents to the requirements of any law or governmental agency having legal jurisdiction over the Properties or (3) qualify the Properties or any Units and improvements thereon for mortgage or improvement loans made by, guaranteed, sponsored by or insured by a governmental or quasi-governmental agency of (4) comply with the requirements of any law or regulations of any corporation, agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of South Carolina, regarding purchase or sale of such Units and improvements or mortgage interested therein as well as any other law or regulation relating to the control of the Properties, including, without limitation, ecological controls construction standards, aesthetics & matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration (VA), U.S. Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requiring an amendment as a condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment, shall be sufficient evidence of the approval or such amendment or VA, HUD and/or such corporation or agency and permit Declarant to amend in accordance with such letter.

Each Owner, by acceptance of deed or other conveyance to a Unit, agrees to be bound by such amendments as are permitted in this Article and further agrees to execute, if requested by

Declarant any such amendment to accomplish any of the aforesaid purposes, provided, that such amendment does not materially alter or change the Owner's right to use the Unit and Common Property.

No amendment made pursuant to this Section shall be effective until duly recorded in the Office of the Register of Deeds for Horry County.

#### **ARTICLE XVI**

#### **LENDER NOTICE**

Section 1. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number upon which it holds, insures or guarantees a first mortgage, any holder, owner or insurer of a first mortgage shall be provided with timely written notice of.

(a) Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.

(b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds the mortgage.

(c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owner's association.

(d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

IN WITNESS WHEREOF, the undersigned OCTAGON, LLC., a South Carolina Limited Liability Company, Declarant by virtue of applicable provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions, has caused this instrument to be executed by its general partner the day and year first above written.

SIGNED, SEALED AND  
DELIVERED IN THE  
PRESENCE OF:

OCTAGON, L.L.C. A SOUTH  
Carolina Limited Liability Company

By: \_\_\_\_\_  
Gregory K. Thompson  
Member

By: \_\_\_\_\_  
Mark Utley  
Member

By: \_\_\_\_\_  
Aaron J. Peterson  
Member

By: \_\_\_\_\_  
Michael L. Thompson  
Member

By: \_\_\_\_\_  
Pete Politis  
Member

By: \_\_\_\_\_  
Pantagiotious G. Sourlis  
Member

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

PROBATE

Personally appeared before me the undersigned witness, & made oath that s/he saw within named OCTAGON, LLC., A South Carolina Limited Liability Company, by its Members, Sign, Seal and as its Act & Deed deliver within written DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS FOR SUMMERFIELD SUBDIVISION; and that s/he with the other subscribed witness witnessed the execution thereof.

SWORN to before me this 21<sup>st</sup> day of July, 2000

Notary Public for South Carolina

Exhibit "A"

LEGAL DESCRIPTION

ALL AND SINGULAR, all those certain parcels or lots of land, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, and more fully shown on a plat of Summerfield Subdivision entitled, "Bonded Final of 81 Lots Containing 25.81 Acres Of Land In Dogwood Neck Township, Horry County, SC Owned by Octagon, LLC., Being Known As Summerfield Subdivision" prepared for Octagon LLC, by Terry M. Watson, RLS Land Surveying Inc., dated June 20, 2000, and recorded in the office of the Register of Deeds for Horry County on July 26th, 2000, in Plat Book 171 at Page 076, reference to which is craved as forming a part and parcel hereof.

HORRY COUNTY ASSESSOR

NEW PARCEL 127-19-01-001 thru 081

SPLIT FROM 127-00-01-084

Map Blk Parcel

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Exhibit "B"

LEGAL DESCRIPTION

ALL AND SINGULAR, all that certain piece, parcel or tract of land, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, described as Tract "B" consisting of 6.13 acres and as more fully shown on a plat entitled "Boundary Survey of 2 Tracts of Land containing 31.94 acres of land in Dogwood Neck Township, Horry County, S.C. Surveyed for Octagon, LLC. by Terry M. Watson, RLS Surveying, Inc., last revised July 5, 2000, and recorded in the office of the Register of Deeds for Horry County on July 26th, 2000, in Plat Book 171 at Page 075, reference to which is craved as forming a part and parcel hereof.

HORRY COUNTY ASSESSOR  
127-00-01-084