

**FIRST AMENDMENT TO  
DECLARATON OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
PINESTONE RESIDENTIAL NEIGHBORHOOD  
(Deed Book 2654 at Page 5057)**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Pinestone Residential Neighborhood (this “First Amendment”) is made as of the 29<sup>th</sup> day of June, 2022 by ROEH LLC, a South Carolina limited liability company (“Declarant”).

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions for Pinestone Residential Neighborhood, made by Declarant, dated as of April 19, 2022 was recorded in the Office of the Register of Deeds for Greenville County, South Carolina on April 19, 2022 in Deed Book 2654 at Page 5057 (the “Declaration”); and

WHEREAS, pursuant to its rights reserved in Section 14.5 of the Declaration, Declarant desires to amend the Declaration to: (a) clarify that the Storm Water Management Facilities (as hereafter defined) are part of the Common Area of the Property, (b) confirm the maintenance obligations with respect to the Storm Water Management Facilities and (c) restrict, in accordance with applicable law, use of the Property which may negatively affect the operation of the Storm Water Management Facilities, as more particularly set forth herein,

NOW THEREFORE, Declarant hereby amends the Declaration as follows:

1. Capitalized terms not otherwise defined herein shall have the meanings thereto ascribed in the Declaration.

2. Section 1.8 of the Declaration shall be deleted in its entirety and replaced with the following provision:

“Common Area”: (a) The portions of the Property which are designated as ‘common area’ on a Residential Subdivision Plat or any subsequent recorded plat affecting the Property or any Additional Property or specifically conveyed to the Association for the common use and enjoyment of all Owners, together with the improvements located thereon (including facilities, furnishings, equipment, infrastructure, Utilities, landscaping, hardscaping, signage, fencing, and mailboxes/mailbox kiosks); (b) all utility easements and other easement rights and property interests which the Declarant or the Association owns, leases or holds possessory or use rights in or to for the common use, benefit and/or enjoyment of the Owners; (c) all private roads (including curbing), drives (other than driveways located on Units), alleys, parking areas, sidewalks, pedestrian paths and trails, bicycle paths, bridges, and green space located

within the Property intended for the common use and enjoyment of all Owners, whether or not located within an area otherwise designated as a 'common area'; and (d) any other property of any type in connection with the use, enjoyment and/or operation of the Property specifically designated as 'common area' by the Declarant or the Association. The Common Area may include areas dedicated to the public or located on other Pinestone Parcels, to the extent that the Homeowners Association agrees to maintain, or is required to maintain, such property. Without limiting the generality of the foregoing, Declarant hereby specifically declares that the facilities comprising the system for the drainage, retention, detention or other management of storm water on and from the Property, other than drainage systems within an individual Unit serving only that Unit (the "Storm Water Management Facilities") shall be Common Areas.

3. Section 5.1(a) of the Declaration shall be deleted in its entirety and replaced with the following provision:

The Association shall maintain and keep in good condition, order and repair the Common Areas. Notwithstanding the foregoing or limiting the generality thereof, subject to this Declaration, Declarant and its successors and assigns, including the Association, will own and maintain the Storm Water Management Facilities (structural and non-structural) located within the Common Areas, including but not limited to, structural and non-structural components of the Storm Water Management Facilities, buffers, low impact development and associated elements. Within these areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the performance of storm water features, easements, buffer areas or which may change the direction of flow of storm water or drainage channels, or obstruct or retard the flow of water through the storm water features in these areas.

4. Other than as specifically set forth in this First Amendment, the Declaration shall remain in full force and effect.

*No Further Text This Page  
Signature Page Follows*

IN WITNESS WHEREOF, the undersigned, has caused this First Amendment to be executed under its hand and seal on this 29<sup>th</sup> day of June, 2022

Executed and declared  
in the presence of:

Jimmy Wilson  
Witness #1

Sharon K. Davis  
Witness # 2 / Notary

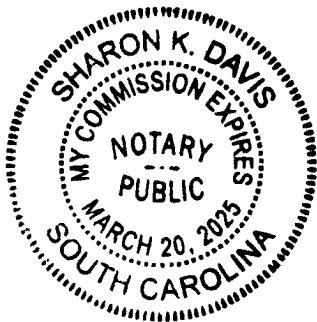
**ROEH LLC, a South Carolina  
limited liability company**

By: [Signature] [SEAL]  
Name: Jimmy Wilson  
Its: Manager

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GREENVILLE**

**ACKNOWLEDGMENT**

I, the undersigned Notary Public of the County and State aforesaid, certify that Jimmy Wilson, as Manager of ROEH LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this 29<sup>th</sup> day of June, 2022



Sharon K. Davis  
Notary Public for South Carolina  
Print Name: Sharon K. Davis  
My Commission Expires: 3-20-2025



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Rec: \$25.00

E-FILED IN GREENVILLE COUNTY, SC

*Timothy J. Hanney*

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO §15-48-10 OF THE  
SOUTH CAROLINA CODE OF LAWS (1976), AS AMENDED**

**DECLARATON OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**PINESTONE RESIDENTIAL NEIGHBORHOOD**

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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PINESTONE RESIDENTIAL NEIGHBORHOOD

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PINESTONE RESIDENTIAL NEIGHBORHOOD (the "Declaration") is made on the date hereinafter set forth by ROEH LLC, a South Carolina limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

A. Declarant is the owner of that certain real property described on Exhibit A, attached hereto and incorporated herein (the "Property").

B. The Property is part of a master planned mixed-use project known as *Pinestone* ("Pinestone") to be developed substantially in accordance with, and subject to, that certain Final Development Plan for Pinestone dated November 11, 2019, revised January 2, 2020, and further revised January 12, 2020, as approved by the City of Travelers Rest on or about January 28, 2020, as it may be further revised or amended from time to time (the "Master Development Plan").

C. As part of Pinestone, the Property is further subject to that certain Reciprocal Easement Agreement, dated December 18, 2020 and recorded December 21, 2020 in the Office of the Register of Deeds for Greenville County, SC (the "Land Records") in Deed Book 2611 at Page 5129 (the "REA"), which sets forth the respective rights and obligations of the owners of the parcels comprising Pinestone (the "Pinestone Parcels") in connection with the ownership, development, use and operation of the Pinestone Parcels.

D. The Property will be developed as a residential neighborhood within Pinestone (the "Pinestone Residential Neighborhood"), substantially in accordance with, and subject to, that certain Revised Preliminary Development Plan dated January 18, 2019 and revised January 19, 2020, as approved by the City of Travelers Rest in Ordinance No. 03-19 dated July 18, 2019, and Ordinance No. 0-08-21 dated April 15, 2021 (the "Residential PDP").

E. This Declaration establishes a general plan and procedure for the overall development, administration, use, maintenance and preservation of the Pinestone Residential Neighborhood and subjects the Property to certain covenants, conditions and restrictions with respect thereto. Pinestone Residential Neighborhood may be developed in one or more phases as more particularly set forth herein (each a "Phase"), and each Phase shall be subject to this Declaration as may be amended from time to time as set forth herein.

F. This Declaration also provides for the creation of Pinestone Homeowners Association, Inc. to own, operate and/or maintain the Common Areas and to administer and enforce the provisions of this Declaration and the other Governing Documents, to the extent provided herein.

G. Declarant intends for the covenants, conditions and restrictions set forth herein to run with the title to the Property (and any Additional Property) and be binding upon and inure to the benefit of Declarant, the Association and each Owner, their respective heirs, successors, successors-in-title, and permitted assigns.

## ARTICLE 1: DEFINITIONS

The terms in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall have the meanings set forth in this Article 1, unless otherwise defined in this Declaration.

1.1 “Additional Property”: Any property contiguous to the Property (or other Additional Property) made subject to this Declaration pursuant to a Supplemental Declaration. Any Additional Property that is made subject to this Declaration shall be subject to the same terms and conditions of this Declaration regarding the Property, except as may be set forth otherwise in the applicable Supplemental Declaration.

1.2 “ARB”: The Architectural Review Board, as described in Section 9.2.

1.3 “Articles of Incorporation” or “Articles”: The Articles of Incorporation of Pinestone Homeowners Association, Inc., as filed or to be filed with the Secretary of State of the State of South Carolina.

1.4 “Association”: Pinestone Homeowners Association, Inc., a South Carolina nonprofit corporation, its successors or assigns.

1.5 “Board of Directors” or “Board”: The body responsible for administration of the Association and serving as the board of directors under South Carolina Nonprofit Corporation Act (SC Code Section 33-31-101 et seq.). The individual members of the Board of Directors are hereafter referred to as “Directors”.

1.6 “Business Day”: Any day, other than a Saturday, Sunday or other day on which banks in Greenville, South Carolina are not open for business. Any time period provided for herein which ends on a day other than a Business Day shall be extended to the next Business Day. Any reference to “days” in this Agreement shall mean calendar days unless specifically designated as business days.

1.7 “Bylaws”: The Bylaws of Pinestone Homeowners Association, Inc., as they may be amended from time to time.

1.8 “Common Area”: The portions of the Property which are: (a) designated as ‘common area’ on a Residential Subdivision Plat or any subsequent recorded plat affecting the Property or any Additional Property or specifically conveyed to the Association for the common use and enjoyment of all Owners,

together with the improvements located thereon (including facilities, furnishings, equipment, infrastructure, Utilities, landscaping, hardscaping, signage, fencing, and mailboxes/mailbox kiosks); (b) all utility easements and other easement rights and property interests which the Declarant or the Association owns, leases or holds possessory or use rights in or to for the common use, benefit and/or enjoyment of the Owners; (c) all private roads (including curbing), drives (other than driveways located on Units), alleys, parking areas, sidewalks, pedestrian paths and trails, bicycle paths, bridges, and green space located within the Property intended for the common use and enjoyment of all Owners, whether or not located within an area otherwise designated as a 'common area'; and (d) any other property of any type specifically designated as 'common area' by the Declarant or the Association. The Common Area may include areas dedicated to the public or located on other Pinestone Parcels, to the extent that the Homeowners Association agrees to maintain, or is required to maintain, such property.

1.9 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association in connection with the ownership, operation, maintenance, repair and/or replacement of the Common Areas and the administration of the Association, as the Board may find necessary or appropriate pursuant to the Governing Documents. Common Expenses shall not include expenses incurred for the installation of infrastructure or other costs related to the initial development of the Property.

1.10 "Declarant": Roeh LLC, a South Carolina limited liability company, its successor or assign who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, there shall be only one (1) "Declarant" hereunder at any one time.

1.11 "Declaration": This Declaration of Covenants, Conditions and Restrictions for Pinestone Residential Neighborhood, as the same may be amended, renewed and/or extended from time to time in the manner herein provided.

1.12 "Declarant Period": The period of time during which the Declarant owns any portion of the Property, any Additional Property, or any other property subject to the REA; provided, however, the Declarant Period shall not terminate until (a) certificates of occupancy have been issued for residential structures on one hundred percent (100%) of the Units shown on a Residential Subdivision Plat(s) and any subsequent subdivision plat for Additional Property, and (b) such Units have been conveyed to an Owner other than the Declarant or the McCarty & Guy Townhome Owner. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration to the Association and/or terminate the Declarant Period upon an earlier date, by delivery of a written instrument to the Board. Notwithstanding the above or any provision in the Governing Documents to the contrary, the Declarant Period shall terminate not later than twenty-five (25) years after the date of this Declaration.

1.13 "General Assessments": Assessments levied on all Units or a particular class of Units to fund Common Expenses for the general benefit of all Units or the particular class of Units, as applicable, as more particularly set forth in Article 8.

1.14 "Governing Documents": The Declaration, Bylaws, Articles of Incorporation, all Supplemental Declarations, the Residential Subdivision Plat(s), the Master Development Plan, the Residential PDP, the REA, the Rules and Regulations of the Association, the Warranty Book, Brand Identity Manual, Design Guidelines, and any other instruments governing any portion of the Property or any of the foregoing documents, as each may be amended from time to time.



1.15 “Guest”: Someone temporarily present at the Property by the specific request or invitation of an Owner or Tenant (other than an Occupant), including agents, employees, contractors and invitees of the Owner or Tenant. All actions or omissions of any Guest shall be deemed the actions or omissions of the Owner and/or Tenant at whose request or invitation such Guest is present at the Property. The Association shall have the right to make reasonable rules and regulations regarding Guests which are in addition to or differ from those applicable to Owners, Tenants and Occupants.

1.16 “Improvement”: Any structure or improvement, including but not limited to, buildings of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other Improvements, subject to approval by the ARB), outbuildings, mail kiosks, underground installations, slope alterations, surface water drainage facilities, sediment control devices, roads, berms, driveways, alley ways, sidewalks, parking areas or facilities, garbage facilities, fences, screening walls, retaining walls, enclosures, stairs, decks, windbreaks, planting or removal of trees, shrubs and other landscaping materials, poles, signs, antennas and satellite dishes, Utilities, heating, cooling and air circulation equipment and facilities, roofed structures, hedges, exterior illumination, changes in exterior color or shape, staking, clearing, excavation, grading, exterior alteration of existing improvements, and all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed, constructed or performed on any portion of the Property.

1.17 “Majority”: Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.18 “McCarty & Guy Townhome Building”: The Townhome Building(s) within which all, but not less than all, Townhomes are owned by the McCarty & Guy Townhome Owner. At such point that any one or more Townhome Unit(s) within a McCarty & Guy Townhome Building is owned by other than the McCarty & Guy Townhome Owner, such Townhome Building shall become a Resident-Owned Townhome Building for purposes herein.

1.19 “McCarty & Guy Townhome Owner”: Pinestone Townhome Owner, LLC, a Delaware limited liability company, which owns or will own certain Townhome Buildings and lease the individual Townhome Units within the same.

1.20 “McCarty & Guy Townhome Unit”: A Townhome Unit owned by the McCarty & Guy Townhome Owner.

1.21 “Member”: A person subject to membership in the Association pursuant to Section 3.1.

1.22 “Mortgage”: A mortgage, deed of trust, deed to secure debt, or any other form of security instrument affecting title to any Unit now or hereafter recorded in the Land Records.

1.23 “Mortgagee”: A beneficiary or holder of a Mortgage.

1.24 “Multi-Plex Unit”: A Unit, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-level or multilevel dwelling attached to one or more dwellings, other than a Townhome, and shown as a ‘multi-plex unit’ on the Residential Subdivision Plat or any subsequent plat of Additional Property.

1.25 “Occupant”: Any Person who occupies a Unit because of a relationship to an Owner or Tenant and is not themselves an Owner or Tenant. All actions or omissions of any Occupant of a Unit shall be deemed the actions or omissions of the Owner and/or Tenant of such Unit. The Association shall have the right to make reasonable rules and regulations regarding Occupants which are in addition to or differ from those applicable to Owners, Tenants and Guests.

1.26 “Owner”: One (1) or more persons who hold the record title to any Unit, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is owned by more than one (1) person, all such persons shall be jointly and severally obligated to perform the responsibilities of such Owner. An Owner (including the Declarant) who has transferred or otherwise conveyed a leasehold interest in and to any Unit to a Leasehold Owner may, in its sole discretion, assign in such lease, all of such Owner’s rights and obligations as an Owner herein; provided, however, that any such assignment shall not relieve such Owner from its duties and obligations hereunder except as expressly provided herein. From and after receipt of such assignment, Declarant, the Association and the ARB shall recognize the Leasehold Owner as the Owner of such Unit.

1.27 “Rules and Regulations”: The rules and regulations adopted from time to time by the Declarant or the Association to implement the objectives of this Declaration.

1.28 “Park North Unit”: Any plot of land within the Neighborhood, whether or not improvements are constructed on that land, which constitutes or will constitute, after the construction of improvements, a single-family detached dwelling and shown as a ‘lot’, ‘single family unit’ or ‘Park North unit’ on a Residential Subdivision Plat or any subsequent plat of Additional Property.

1.29 “Special Assessments”: Assessments levied in accordance with Section 8.3.

1.30 “Stream Preservation Easement Area”: That certain portion of the Property shown as ‘stream preservation easement’ on the Master Development Plan and the Residential Subdivision Plat, which such area includes portions of Units which border Beaverdam Creek. Restrictions in connection with the development and use of the Stream Preservation Easement are more particularly set forth in Section 12.7.

1.31 “Resident-Owned Townhome Building”: The Townhome Building(s) within which one or more Townhomes is owned by an Owner other than the McCarty & Guy Townhome Owner.

1.32 “Resident-Owned Townhome Unit”: The Townhome Units, other than the McCarty & Guy Townhome Units.

1.33 “Residential Subdivision Plat”: A subdivision plat for all or any portion of the Property or Additional Property recorded in the Land Records creating the Units and certain Common Areas within the Property or Additional Property in connection with the development of the Pinestone Residential Neighborhood or any Phase thereof, as the same may be supplemented or amended from time to time.

1.34 “Supplemental Declaration”: An instrument including but not limited to a deed of conveyance, filed in the Land Records which (a) memorializes the recording of a Residential Subdivision Plat of a portion of the Property or Additional Property in connection with development of a subsequent

Phase of the Pinestone Residential Neighborhood; (b) subjects Additional Property to, or removes property from, this Declaration, and/or (c) imposes, expressly or by reference, additional covenants, conditions or restrictions on the Property or Additional Property, including, without limitation, a declaration of condominium affecting the Property or Additional Property.

1.35 “Tenant”: The lessee or tenant under any written lease of a Unit, who has been assigned the Owner’s rights and obligations under this Declaration with respect to the Unit; provided, however, such assignment shall not relieve the Owner of such responsibilities, and a Tenant’s rights may be limited as set out in this Declaration or any Rules and Regulations. Tenants shall not be Members of the Association or have the right to vote on matters subject to vote by the Members of the Association.

1.36 “Total Association Vote”: The total number of eligible votes for any particular matter of the Association in which the Members are entitled to vote.

1.37 “Townhome”: An individual multilevel dwelling on a Townhome Unit comprising a portion of a Townhome Building.

1.38 “Townhome Building”: A building comprised of two or more attached Townhomes constructed on a series of Townhome Units.

1.39 “Townhome Unit”: A Unit, whether or not improvements are constructed thereon, shown as a ‘townhome unit’ on a Residential Subdivision Plat or a subsequent plat of Additional Property, on which a Townhome is or is intended to be constructed.

1.40 “Unit”: A portion of the Property, whether improved or not improved, which may be independently owned and conveyed for construction of a residence, and is labeled as a ‘lot’, ‘unit’, ‘single family unit’ ‘Park North unit’, ‘multi-plex unit’, ‘townhome unit’ or ‘The Rows unit’ on a Residential Subdivision Plat or any subsequent plat of Additional Property. “Unit” shall not include Common Area and/or property dedicated to the public. In the case of any Additional Property intended and suitable for subdivision, but as to which no final subdivision plat has been filed, such Additional Property shall be deemed to be a single Unit until such time as a final subdivision plat creating Units and/or Common Area within such Additional Property is filed in the Land Records.

1.41 “Utilities”: Systems for the delivery or use of the following services, as applicable: public water, sanitary sewer, storm water drainage and detention, natural gas, internet, electricity, telephone, cable, fiberoptic, solar power, other passive power sources, or any other utilities of any nature whatsoever.

1.42 “Zoning Ordinance—Pinestone PD”: The Residential PDP, as finalized and amended from time to time, and, to the extent not inconsistent therewith, the general Zoning Ordinance of City of Travelers Rest, South Carolina, as it may be amended from time to time.

## **ARTICLE 2: PROPERTY RIGHTS**

2.1 Non-Exclusive Easement for Use of Common Areas. Every Owner shall have a non-exclusive easement for the appropriate use and enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Unit, subject to:

- (a) The terms and conditions of this Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Association to restrict physical access to certain Common Areas which are intended to be service areas, such as detention ponds and Utilities;
- (d) The right of the Association to charge reasonable admission and other fees for the use of the Common Area and to impose reasonable limits upon the use of the same, including, without limitation, restrictions on hours of use, number of Guests, and permitted activities thereon;
- (e) The right of the Association to suspend the voting rights and right to use any Common Area by an Owner, or such Owner's Tenants, Occupants and Guests for any period during which any assessment against such Owner's Unit remains unpaid; and for any infraction of this Declaration or the Rules and Regulations;
- (f) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility company and/or to adjust the boundary lines of any Common Areas, subject to such conditions as may be agreed to by the Members and, to the extent during the Declarant Period, the Declarant;
- (g) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner or Tenant for the exclusive use of such Owner or Tenant and the Occupants and Guests thereof upon such conditions as may be established by the Association;
- (h) The right of the Association to allow persons other than Owners and their respective Tenants, Occupants and Guests to use any facilities situated upon the Common Area upon such conditions as may be established by the Association;
- (i) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities thereon;
- (j) The right of the Declarant or the Association to convey or exchange portions of Common Area pursuant to Section 7.4;
- (k) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- (l) The right of the Declarant to conduct activities and establish facilities within the Property as provided in Article 14.

2.2 Rights Extended to Tenants and Occupants. The rights of Owners to use the Common Areas as set forth herein, extend to each Owner's Tenants and Occupants, as may be limited by the Rules and Regulations, unless specifically reserved by such Owner in writing.

2.3 Leases of Units. Units may be leased for residential purposes only. Any lease agreement between an Owner and Tenant for the lease of such Owner's Unit (a "Lease") shall be in writing, shall be for not less than three (3) months, and shall provide that the Lease is subject in all respects to the provisions of this Declaration and the other Governing Documents, including the payment of any Assessments and that any failure by the Tenant to comply with the terms of such documents shall be a default under the terms of the Lease. Leases shall also provide that in the event of noncompliance, the Association, in addition to any other remedies available to it, may evict the Tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's Unit. Notwithstanding the foregoing, the Owner of the leased Unit shall remain jointly and severally liable for amounts due and owing to the Association, and the Association shall have no obligation to seek payment from a Tenant, or exhaust its remedies with respect thereto, prior to exercising any rights and remedies against the Owner or the Unit. Copies of Leases and all amendments thereto shall be provided to the Association by the Owner of the leased Unit.

2.4 No Partition. There shall be no judicial partition of the Common Area.

2.5 Condemnation. The Board shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or conveyed in lieu thereof under threat of condemnation by the Board acting on the written direction of at least sixty-seven percent (67%) of the total Members entitled to vote and, during the Declarant Period, the written consent of the Declarant), each Owner shall be entitled to written notice of the Board's plan of allocation of the condemnation award or proceeds of such conveyance prior to disbursement thereof. Notwithstanding anything to the contrary herein, the award made for such taking or proceeds of such conveyance shall be payable to the Declarant so long as the Declarant is funding any deficits of the Association.

If the taking or conveyance involves a portion of the Common Area on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area, if any, and to the extent practicable, unless within sixty (60) days after such taking at least sixty-seven percent (67%) of the total Members entitled to vote and, during the Declarant Period, the Declarant, shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ARB. The provisions of Section 6.1(b) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any Improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine, subject to the rights of Declarant to receive such funds as set forth above.

### **ARTICLE 3: ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

3.1 Purpose and Governance of Association. The purpose of the Association is to own, operate and/or maintain the Common Areas and to administer and enforce the provisions of this Declaration and the other Governing Documents, to the extent provided herein. The Association shall be governed by a Board of Directors, and the Board shall make all decisions of the Association, except as otherwise set forth

in this Declaration, the Bylaws or the Act. During the Declarant Period, the Declarant shall have the right to appoint all of the Directors. Following the Declarant Period, the Directors shall be selected as provided in the Bylaws.

3.2 Membership. Every Owner shall be a Member of the Association by virtue of ownership of a Unit. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Sections 3.2 or elsewhere herein or in the Bylaws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.3 Voting. Except as otherwise set forth herein, the Owners of each Unit shall have one (1) vote in all matters of the Association in which the Members are entitled to vote. If there is more than one (1) Owner of a Unit, the votes for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such notice, the Unit's vote shall be suspended if more than one (1) person seeks to exercise it. No vote shall be exercised on behalf of any Unit if any assessment for such Unit is delinquent. A Tenant or Occupant of a Unit shall not be permitted to exercise the Unit Owner's right to vote. Notwithstanding anything to the contrary set forth herein, during the Declarant Period, Declarant shall be entitled to five (5) votes for the following: (a) each Unit created pursuant to a recorded Residential Subdivision Plat and owned by Declarant, and (b) each residential lot approved by the City of Travelers Rest pursuant to the Residential PDP and not yet reflected on a recorded Residential Subdivision Plat.

#### **ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Establishment. Declarant shall establish the Association as an association of all of the Owners in accordance with the provisions of the South Carolina Nonprofit Corporation Act, as then in effect, and this Declaration. Each Owner who owns a Unit, by accepting a deed thereto, shall be deemed to have consented to be bound by the Articles, the Bylaws, and the rules and regulations of the Association.

4.2 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Areas and all Improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Property as the Board may adopt pursuant to Article 11. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration, as may be delegated to the ARB. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of South Carolina.

4.3 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the Property, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association as Common Area at its expense for the benefit of its Members,

subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request and approval by the Declarant, the Board shall re-convey to Declarant any portions of the Property originally conveyed by Declarant to the Association in exchange for other property reasonably equivalent in value to the Association.

4.4 Enforcement. The Board, or any committee established by the Board with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and cure procedures, if any, set forth in the Bylaws or other applicable Governing Documents. Such sanctions may include, without limitation:

(a) imposing monetary fines which shall constitute a lien upon the Unit of the violator. In the event that any Owner, or Tenant, Occupant or Guest thereof violates the Governing Documents the fine shall be assessed against the Owner, and, as applicable, jointly and severally against the Tenant or Occupant.

(b) filing notices of violations in the Land Records providing record notice of the associated lien;

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

(d) suspending the Owner's, and as applicable, the Tenant's, Occupants and/or Guest's right or privilege to use any facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress of an Owner, Tenant or Occupant to or from a Unit; and

(e) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association.

In addition, the Board may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules, or the correction of any maintenance, construction or other violation of the Governing Documents).

The Association may also elect to enforce any provisions of the Governing Documents by suit at law or in equity to enjoin any violation or to recover monetary damages or both.

All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails it shall be entitled to recover from such Owner, Tenant or Occupant, as applicable, all costs, including, without limitation, reasonable attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the

Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

Any violation, by any Owner or Tenant, Occupant or Guest thereof, of any county, city, state and/or federal law and/or ordinances occurring on the Property or otherwise to the extent applicable to the ownership, use, maintenance or conveyance of a Unit or the Common Area, shall be a violation of this Declaration, and the Association shall be entitled to enforce its rights hereunder with respect to the same for the benefit of the Association and its Members and may cooperate with local and other governments to enforce laws and ordinances on the Property.

4.5 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members.

4.6 Governmental Interests. During the Declarant Period, the Declarant may designate sites within the Property for public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by the Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

4.7 Indemnification. To the greatest extent permitted by law, the Association shall indemnify every officer, director, ARB member and committee member against all damages, liabilities and expenses, including reasonable attorneys' fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, ARB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation, and South Carolina law.

The officers, directors, ARB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, ARB members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association. To the greatest extent permitted by Law, the Association shall indemnify and forever hold each such officer, director, ARB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, ARB member or committee member may be entitled.

4.8 Dedication of or Grant of Easements on Common Areas. The Association, or during the Declarant Period, the Declarant, may dedicate or grant easements across portions of the Common Area to the City of Travelers Rest and/or Greenville County, South Carolina, or to any other local, state, or federal governmental or quasi-governmental authority or utility company.



4.9 Security. Each Owner, Tenant and Occupant of a Unit and their respective Guests shall be responsible for their own personal safety and the security of their property while on the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure cannot be compromised or circumvented, nor that any such security system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform the Tenants, Occupants and Guests thereof that the Association, its Board and committees, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties. Any costs incurred by the Association to provide such services shall be paid by the Association and shall be charged to all Units, as a General Assessment or a Special Assessment, as determined by the Board in its sole discretion.

4.10 Future Development. Each Owner acknowledges, understands and covenants to inform the Tenants, Occupants and Guests of the Unit that the Property and areas adjacent to the Property are subject to further development and expansion, and therefore there may be certain inconveniences and/or interruptions during any period of construction, and Owner waives all claims with respect thereto. Owner agrees that if Owner or the Tenants, Occupants or Guests of the Unit enter onto any area of construction, they do so at their own risk, and neither the Declarant, the Association, nor their respective contractors, agents, or employees shall be liable for any damage, loss or injury to such persons.

## **ARTICLE 5: ALLOCATION OF MAINTENANCE OBLIGATIONS**

### **5.1 Association's Responsibility.**

(a) The Association shall maintain and keep in good condition, order and repair the Common Areas.

(b) The Association shall maintain certain portions of the landscaped areas and elements located on the Units as follows: (i) yard and lawn maintenance, which maintenance shall include regular grass cutting, pruning of trees and shrubs, ground cover (excluding those items planted by an Owner which shall not be maintained by the Association), removal of grass clippings and dead plant materials, fertilizing and weed prevention, excluding any area of the Unit which is inside an enclosed fenced area (regardless of gate access) or otherwise obstructed by the Owner, and (ii) mulching of trees in areas between the roadways and sidewalks (collectively, the "Common Unit Landscaping"). The Association shall also maintain all streetlights, street signs and other structures in the areas between the roadways and the sidewalks installed by Declarant, the Association, a governing authority or utility company, except to the extent the same are maintained by the governing authority or utility company as set forth below.

(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that such property is dedicated to any local, state, or federal government or quasi-governmental entity which assumes the maintenance responsibilities therefor; provided, however, that in

connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Areas and the Common Unit Landscaping incurred by the Association shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other persons responsible for, certain portions of the Common Areas pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof.

(e) The Association's maintenance obligations with respect to the Resident-Owned Townhomes set forth in Sections 10.2 and 10.3, below, shall be in addition to the obligations set forth in this Section 5.1.

(f) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Neighborhood-wide standard, the Declarant may, upon not less than ten (10) days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner's Responsibilities. Except as otherwise explicitly set forth herein, each Owner shall maintain its Unit and all Improvements located thereon in a manner consistent with all Governing Documents, unless such maintenance responsibility is otherwise assigned to or assumed by the Association, a governing authority or utility company. Without limiting the generality of the maintenance obligations set forth in Section 10.1, below, such Owner's maintenance includes, but is not limited to the following:

(a) Removal of all litter, trash, refuse and waste at least once a week and keeping the trash pick-up, service and loading areas in a neat condition, including, but not limited to, any area that can be seen from the roadway and/or alley;

(b) Mowing and other maintenance of lawns within enclosed fenced areas of the Unit on a regular basis; depending on weather conditions, mowing should be at least once or twice a month during any growing seasons;

(c) Pruning of trees and shrubs located on the Unit as reasonably necessary or advisable for the health thereof;

(d) Mulching twice a year of trees and shrub beds planted or installed on the Unit by Declarant or its contractors and any replacements thereof (other than those located between the roadways and sidewalks, which shall be the responsibility of the Association);

(e) Keeping exterior lighting, fixtures, and mechanical facilities (other than those owned by the Association, a governing authority or utility company) in working order;

(f) Keeping plant materials within all landscaped and garden areas of the Unit alive and promptly removing and replacing any dead or diseased plant material; provided, mulching of trees

between the roadways and sidewalks shall be performed only by the Association;

(g) Maintaining in good order and repair the irrigation and stormwater drainage systems serving the Unit, including those portions of such systems located in the area between the roadways and the sidewalks, to the extent such portions of those systems are part of the irrigation and stormwater drainage systems serving the rest of the Unit;

(h) Keeping driveways in good repair; and

(i) Repairing exterior damage to Improvements and maintaining and keeping in good repair the exterior of Improvements, including, without limitation, repainting the same as reasonably warranted.

Every Owner shall also be responsible for the security and safety of its Unit notwithstanding any security systems or measures which may be provided by the Association.

In addition to any other enforcement rights, if an Owner fails to properly perform its maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.1.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with all Governing Documents. Neither the Association nor any Owner shall be liable for any damage or injury occurring on or arising out of the condition of property which such person does not own, except to the extent that it has undertaken such maintenance responsibilities and has been negligent in the performance thereof.

## **ARTICLE 6: INSURANCE AND CASUALTY LOSSES**

### **6.1 Association Insurance.**

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect insurance as it deems advisable, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available. The types of insurance in effect may or may not include the following:

- (i) Blanket property insurance for all insurable Improvements within the Common Areas;
- (ii) Commercial general liability insurance on the Common Areas, insuring the Association and its Members;
- (iii) Workers compensation insurance and employer's liability insurance, if and to the extent required by law;
- (iv) Directors and officer's liability coverage;

- (v) Fidelity insurance covering all persons responsible for handling Association funds; and
- (vi) Such additional insurance as the Board, in its best business judgment, determines advisable or is required by law.

Premiums for all insurance on the Common Areas and the operations of the Association shall be Common Expenses and shall be included in the General Assessment. In the event of an insured loss to any portion of the Common Area, the deductible shall be treated as a Common Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, Tenants, or their respective Occupants or Guests, or anyone else acting on the Owner's or Occupant's behalf, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units.

(b) Damage and Destruction. In the event of any insured loss, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or Improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least sixty-seven percent (67%) of the Members entitled to vote and, during the Declarant Period, the Declarant, decide within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative Improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy a Special Assessment to cover the shortfall against the Owners. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, Tenants, or their respective Occupants or Guests, or anyone else acting on the Owner's or Occupant's behalf, then the Board may specifically assess the full amount of such insufficiency against such Owner(s) and their Units.

6.2 Owner's Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance with limits of not less than full replacement cost of all insurable Improvements on its Unit, less a reasonable deductible, unless otherwise set forth herein.

Except as otherwise set forth herein, each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising its Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition. The Owner shall pay all costs which are not covered by insurance proceeds.

6.3 Resident-Owned Townhome Unit Insurance. Notwithstanding, the provisions of Sections 6.1 and 6.2, obligations regarding insurance and casualty with respect solely to the Resident-Owned Townhome Building(s) shall be as follows (the "Townhome Insurance"):

(a) The Association shall obtain a group or blanket property insurance policy covering the Resident-Owned Townhome Building(s) in an amount equal to the full replacement value of all improvements initially constructed on the Resident-Owned Townhome Units, which policy shall contain a Replacement Cost Endorsement. The named insureds shall be the Association, individually, and as agent for the Owners of the Resident-Owned Townhome Units covered by the policy, without naming them, and as agent for the mortgagees, without naming them. The Resident-Owned Townhome Unit Owners and their mortgagees shall be deemed additional named insureds.

(b) The full amount of any insurance proceeds from said group or blanket policy shall be applied to the rebuilding or repair of any destroyed or damaged Resident-Owned Townhome Building or portion thereof.

(c) Premiums for the group or blanket property insurance policy shall be a Townhome Expense and shall be collectible as part of a Townhome Assessment as provided in Article 8, below. In the event of an insured loss to any portion of the Resident-Owned Townhome Buildings, the deductible shall be treated as a Townhome Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one (1) or more Resident-Owned Townhome Unit Owners, Tenants, or their respective Occupants or Guests, or anyone else acting on the Resident-Owned Townhome Owner's or Occupant's behalf, then the Board may specifically assess the full amount of such deductible against such Resident-Owned Townhome Owner(s) and their Units

(d) Such policies shall provide that insurance proceeds payable on account of loss of, or damage to, the real property shall be adjusted with the carrier by the Association and shall be payable solely to the Association, as insurance trustee for the Owner(s) of the Resident-Owned Townhome Unit and the mortgagees thereof, if any. Such insurance proceeds shall be applied to repair or restoration of the Resident-Owned Townhome Units as hereinafter provided. All such insurance policies shall provide that coverage may not be canceled by the carrier without first giving the Association, the applicable Resident-Owned Townhome Unit Owners and their mortgagees, if any, ten (10) days written notice of cancellation.

All such policies shall contain, if obtainable, a waiver of the right of subrogation against any Resident-Owned Townhome Unit Owner and the Association, its members, officers, agents and employees.

(e) The Association shall also obtain a broad form general liability policy with respect to all Resident-Owned Townhome Units covering all damage or injury caused by the negligence of the Association or any of its agents, officers or employees in an amount of not less than One Million and 00/100 (\$1,000,000.00) Dollars for each occurrence and such policies shall contain a waiver of the right of subrogation against any Resident-Owned Townhome Unit Owner and the Association, its members, officers, agents and employees.

(f) Any Owner of a Resident-Owned Townhome Unit may, if he or she wishes, at his/her own expense, carry any and all other insurance such Owner deems advisable beyond that included in the above policy required by the Association; provided, however, any such policies obtained by the Owner shall contain a waiver of the right of subrogation against the Association, its members, officers, agents and employees.

(g) In the event of damage or destruction by fire or other casualty to any property covered by insurance payable to the Association as trustee for the Resident-Owned Townhome Unit Owners and their mortgagees, the Board shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Resident-Owned Townhome Unit(s) to as good a condition as formerly existed. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board, or by an agent duly authorized by the Board of Directors. The Board shall obtain bids from at least two (2) reputable contractors, and then may negotiate with any such contractor, who may be required to provide a full performance bond for the repair, reconstruction or rebuilding of such building or buildings.

(h) Also, the Association may levy in any calendar year, a Special Assessment against the Owners of the Resident-Owned Townhome Units for the purpose of defraying the cost of reconstruction, repair or replacement of Resident-Owned Townhome Building, to the extent that insurance proceeds under a group insurance policy containing a Replacement Cost Endorsement are insufficient to pay all costs of said construction, reconstruction, repair or replacement to as good condition as existed prior to damage or destruction by fire or other casualty covered by said insurance. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one (1) or more Resident-Owned Townhome Unit Owners, Tenants, or their respective Occupants or Guests, or anyone else acting on the Resident-Owned Townhome Unit Owner's or Occupant's behalf, then the Board may specifically assess the full amount of such insufficiency against such Resident-Owned Townhome Unit Owner(s) and their Units.

(i) The reconstructed or repaired Resident-Owned Townhome Unit(s) shall be substantially identical to the destroyed or damaged Resident-Owned Townhome Unit(s), unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

(j) If a Resident-Owned Townhome Unit is not habitable by reason of damage, the obligation of the Resident-Owned Townhome Unit Owner(s) to pay periodic assessment installments shall be

suspended either for a period of ninety (90) days or until the dwelling is restored to a habitable condition, whichever shall first occur. In the event a Resident-Owned Townhome Unit is damaged or destroyed, the Resident-Owned Townhome Unit Owner, at his/her expense and to the extent safe to do so, shall remove all personal debris from the damaged Resident-Owned Townhome Unit within thirty (30) days, so that it shall be placed in a neat, clean, and safe condition; and if such Resident-Owned Townhome Unit Owner fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Resident-Owned Townhome Unit until paid by the Resident-Owned Townhome Unit Owner, unless the Resident-Owned Townhome Unit is thereafter acquired by the Association.

(k) Any Resident-Owned Townhome Unit which has been destroyed, in whole or in part, by fire or other casualty, and is substantially restored or reconstructed, shall remain and be subject to the provisions of this Declaration and to the Bylaws of the Association.

6.4 McCarty & Guy Townhome Buildings. McCarty & Guy Townhome Owner shall be responsible for maintaining property insurance on the McCarty & Guy Townhome Buildings. Upon the sale by the McCarty & Guy Townhome Owner of one or more McCarty & Guy Townhome Units within a McCarty & Guy Townhome Building, the entirety of such Townhome Building shall be considered a Resident-Owned Townhome Building for all purposes under this Declaration, including Townhome Insurance (and the associated Townhome Expenses and Townhome Assessments).

## **ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1 Annexation by Declarant. During the Declarant Period, Declarant may from time to time unilaterally subject Additional Property to the provisions of this Declaration by recording of a Supplemental Declaration or any similar document imposing covenants, conditions, restrictions and easements thereon in the Land Records describing such property to be annexed. Such Supplemental Declaration shall not require the consent of Members but shall require the consent of the owner of such property, if other than the Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration in the Land Records unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any other property in any manner whatsoever.

7.2 Annexation by Members. Following the Declarant Period, the Association may subject Additional Property to the provisions of this Declaration with the consent of the owner of such property and the affirmative vote of at least sixty-seven percent (67%) of the Members entitled to vote at a meeting duly called for such purpose.

7.3 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Property to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration, filed either concurrently with or after the annexation of Additional Property, and shall require the written consent of the owner(s) of the property affected by such additional covenants and easements, if other than the Declarant. The Supplemental Declaration may contain such complementary or contradictory additions and modifications of the provisions contained in this Declaration as may be necessary or convenient in the judgment of Declarant to reflect the different character, if any, of the added Property.

7.4 Withdrawal of Property. The Declarant (or the Association after the Declarant Period) may unilaterally withdraw portions of the Common Area or Units which have not been sold from this Declaration for the following purposes: to eliminate unintentional encroachments or projections of Improvements onto or from portions of the Common Area or unsold Units, to effect any amendments to the REA or other Governing Documents determined to be reasonably necessary or advisable by Declarant, to exchange portions of the Common Area or unsold Units for portions of other Pinestone Parcels, other property of Declarant or other adjacent property of substantially equal value or use to the Pinestone Residential Neighborhood, to enhance the use and enjoyment of the Common Areas by the Owners, or as Declarant may otherwise reasonably determine.

## ARTICLE 8: ASSESSMENTS

8.1 Creation of Assessments. Each Owner, by accepting a deed for a Unit, covenants and agrees to pay to the Association General Assessments, Special Assessments and other charges provided by this Declaration, together with interest thereon, which shall be fixed, established and collected as the Board may specifically authorize from time to time (collectively, the “Assessments”).

(a) The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and in particular for the acquisition, improvement and maintenance of property, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, which may include, but shall not be limited to: the costs of repairs, replacements and additions of or to the Common Area; the maintenance of storm drain lines, water and sewer mains in and upon the Common Area and alley ways; the maintenance of open spaces, alleys which have not been accepted for dedication by a public authority, roadway medians (including medians and islands located in dedicated rights-of way), entranceways, drives, parking areas, signage, landscaping and lighting within the Common Area; the maintenance of retention areas or other bodies of water located within the Common Area; the cost of labor, equipment, materials, management and supervision in connection with all maintenance, repair and replacement activities; the payment of taxes assessed against the Common Area; the payments of any amounts due under the REA with respect to the Property; the procurement and maintenance of insurance in accordance with the Governing Documents; the lighting of streets (whether public or private); the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the costs associated with duties of the Architectural Review Board; the employment of attorneys, accountants and other professional advisors or other agents to represent the Association when necessary; security services; pest and rodent control measures; such other needs as may arise; and the provision of adequate reserves for the replacement of capital improvements and other capital expenditures, including, without limiting the generality of the foregoing, the paving of roads, alleys, and parking areas within the Common Area, and any other capital expenses for which the Association is responsible.

(b) The Association may establish and maintain a reserve fund for deferred maintenance or repair or replacement of capital improvements and other capital expenditures, including, without limiting the generality of the foregoing, the re-paving of roads, alleys, and parking areas within the Common Area, and any other capital expenses or other expenses for which the Association is responsible, as well as for unanticipated or extraordinary expenses which may arise from time to time. Such reserve fund, if any, is to be established out of General Assessments for Common Expense. Declarant may, but is not obligated to,



contribute to any reserve fund established by the Association.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Common Areas, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration and the other Governing Documents. As monies for any Assessments are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his or her membership interest therein, except as an appurtenance to his or her Unit. When an Owner shall cease to be a Member of the Association by reason of his divestment of ownership of such Owner's Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Common Areas and the administration of the Association.

8.2 Townhome Expenses; Townhome Assessment. In addition to the Common Expenses assessed through the General Assessments, the Cost of Townhome Maintenance (as defined in Section 10.2) and Townhome Insurance (as defined in Section 6.3) with respect to the Resident-Owned Townhome Units, together with any other amounts incurred by the Association in connection with the Resident-Owned Townhome Units, as permitted herein, shall be considered "Townhome Expenses" to be paid by the Owners of the Resident-Owned Townhome Units as set forth herein; provided, however, to the extent the cost of landscaping of the Resident-Owned Townhome Units is included in the Common Unit Landscaping for which all Units are charged through the General Assessments, the Townhome Expenses shall not include the same. Townhome Expenses shall also include any costs for additional services or a higher level of services applicable only to the Townhome Units which the Association has approved. The Board shall prepare a separate or additional budget covering the estimated Townhome Expenses expected to be incurred by the Association during the coming year and may include any contributions to be made to a reserve fund for the Resident-Owned Townhome Units as the Board may deem advisable (the "Townhome Budget"). The Association shall levy an additional amount equally against all Resident-Owned Townhome Units to fund Townhouse Expenses in accordance with the Townhome Budget (the "Townhome Assessments"), which such Townhome Assessments shall become a lien against the Resident-Owned Townhome Units and shall be assessed and paid as and when the General Assessments are assessed and paid. Funds collected from Townhome Unit Owners pursuant to the Townhome Assessments may be held by the Association in its bank account(s) together with General Assessments or Special Assessments, provided, separate ledgers for each shall be maintained by the Association.

8.3 Initial Maximum Assessments and Permitted Increases.

(a) Until December 31, 2023, the maximum General Assessment per Unit shall not be more than One Thousand Five Hundred and No/100 (\$1,500.00) Dollars.

(b) Until December 31, 2023, the maximum Townhome Assessment shall not be more than One Thousand Two Hundred and No/100 (\$1,200.00) Dollars per Townhome Unit.

(c) The amounts of the General Assessment and the Townhome Assessment for the 2024 calendar year and for each calendar year thereafter shall be established by the Board and may be increased by the Board, without approval by the Members, by an amount not to exceed fifteen percent (15%) of the General Assessment or the Townhome Assessment, respectively, of the previous year.

(d) The General Assessment and the Townhome Assessment may be increased by more than fifteen percent (15%) in any one successive year if the same is approved by the vote of at least sixty-seven percent (67%) of the Members entitled to vote at a meeting subject to the special notice and quorum rules set forth in Section 8.6, below, and, if during the Declarant Period, with the approval of the Declarant.

#### 8.4 Other Services and Charges.

(a) The Association may agree to provide a service to be shared by less than all the Owners by agreement with those Owners, and the Association shall charge those Owners sharing the service for their respective shares of the cost thereof. The allocation of such cost may be calculated differently than the allocation of General Assessments for Common Expenses and shall be based upon the actual cost of providing the service to the sharing Owners, together with a reasonable charge for managing the service, all as determined by the Association. No charge for such shared service shall be made to Owners who do not share in the benefit of the service. The cost of such shared service shall be considered an additional assessment against the sharing Owners for purposes of this Declaration, shall become a lien against the Units of the sharing Owners, and shall specifically include all remedies for collection and enforcement of such assessment.

(b) Costs that the Association incurs in connection with enforcement of this Declaration against a particular Unit shall be considered an additional assessment against such Unit for purposes of this Declaration and shall become a lien against the Unit and shall accrue interest at the rate set by the Board (subject to the maximum interest rate limitations of South Carolina law).

8.5 Special Assessments. Capital improvements or other capital expenditures, deferred maintenance and substantial unanticipated or extraordinary expenses may be funded through the reserve fund, if any, or through a special assessment levied against the Units in addition to the General Assessment ("Special Assessment"), at the Board's election, subject to the provisions hereof. So long as the total amount of Special Assessments allocable to each Unit does not exceed \$500.00 in any one fiscal year, the Board may impose such Special Assessment. All Special Assessments which exceed the \$500.00 limitation shall be effective only if such assessment is approved or ratified by sixty-seven percent (67%) of the Owners entitled to vote at a meeting subject to the special notice and quorum rules set forth in Section 8.6, below and, if during the Declarant Period, with the approval of the Declarant. All Special Assessments shall be fixed at a uniform rate for all Units, unless the expenditure relates only to all or some of the Resident-Owned Townhome Units or Multi-Plex Units, in which case, it shall be fixed at a uniform rate for such Resident-Owned Townhome Units or Multi-Plex Units, as applicable.

8.6 Special Notice and Quorum Rules for Actions Requiring Member Approval. Written notice of any meeting called for the purpose of taking any action authorized under Sections 8.3 and 8.5 shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence (in person or by proxy) of at least sixty percent (60%) of the Members entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the

subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.7 Time Periods for Establishment and Collection of Assessments. The fiscal year of the Association begins January 1 of each year and ends on December 31 of that year, unless the Board selects a different fiscal year. At least one month before each fiscal year end, the Board shall fix the amounts of the General Assessment and the Townhome Assessment for the following fiscal year, and promptly thereafter, the Board shall give written notice to each of the Owners of the amount of the Assessments such Owner will owe. In the event the Board shall fail to fix the amount of General Assessment and/or the Townhome Assessment as described above, the General Assessment or Townhome Assessment, respectively, fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. The charging and collection of Assessments shall commence as to a Unit on the date on which the Unit is conveyed to a person other than the Declarant, and the Assessments for such year shall be adjusted according to the number of months remaining in the fiscal year. The Association shall, upon request in connection with the financing or sale of a Unit, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Unit have been paid. The Association must prepare annual statements of its income and expenses which are to be made available to each Owner. Unless required by law or the Board, annual statements do not need to be audited.

8.8 Lien for Assessments. The Association shall have a lien against each Unit to secure payment of Assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of South Carolina law), late charges in such amount as the Board may establish (subject to the limitations of South Carolina law), costs of collection and reasonable attorney's fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first priority Mortgage recording prior to the date such lien for past-due assessments is filed by the Association. Such lien may be enforced by suit for payment of amounts owed or judicial foreclosure.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Assessments on such Unit due prior to such acquisition of title but shall be and remain liable for Assessments on such Unit incurred as of the date such Mortgagee or other purchaser takes title to the Unit pursuant to the foreclosure. The Association shall have the right to charge such delinquent amount (applicable to the period before transfer of title pursuant to foreclosure) as a Common Expense collectible from Owners of all Units subject to Assessment under this Article 8, including such acquirer, its successors and assigns.

All other persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.9 Exempt Property. All property dedicated to, and accepted by, a local public authority, all Common Areas (including but not limited to improvements of every kind constructed, installed or planted

by Declarant or the Association on the Common Areas) owned in fee simple by the Declarant or the Association, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of South Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

8.10 Payment of Assessments by Declarant. Notwithstanding anything provided in this Declaration to the contrary, the Declarant (as a Member of the Association as the Owner of any Unit) shall not be responsible for the payment of any assessments with respect to any Units owned by Declarant unless Improvements have been constructed thereon, and in which event Declarant shall pay assessments in the manner set forth in this Article 8. During the Declarant-Period, the Declarant may (but shall not be required to) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association and the sum of the General Assessments and Special Assessments collected by the Association in any fiscal year, which such advance may be considered a loan, at Declarant's discretion, repayable to Declarant the following year from General Assessments and/or Special Assessments, subject to the limitations set forth in Section 8.3 and 8.5.

8.11 Owner Responsibility for Payment. In the event that the Association determines that the need for maintenance, repair, or replacement of the Common Area or any portion of a Unit which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or the Tenants, Occupants or Guests thereof and is not covered and paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be charged to such Owner and shall become a lien against the Unit of such Owner.

## **ARTICLE 9: ARCHITECTURAL STANDARDS; RECONSTRUCTION**

9.1 General. No Improvements shall be placed, erected, installed, constructed or altered upon any Unit except in compliance with this Article and with the prior written approval of the appropriate reviewing body under Section 9.2, in accordance with the application and approval requirements pursuant to Section 9.3.

All Improvements constructed on any Unit or any other portion of the Property shall be built in accordance with the plans and specifications of a person licensed in the State of South Carolina to engage in work consistent with the intended construction in accordance with applicable laws, rules and regulations, unless otherwise acceptable to the ARB, in its sole discretion. All plans and specifications shall be subject to review as provided herein.

9.2 Architectural Review Board. Responsibility for review of all applications for construction and modifications under this Article shall be handled exclusively by the Architectural Review Board, the members of which need not be Members of the Association or representatives of Members. Until the expiration of the Declarant Period, the Declarant retains the right to appoint all member(s) of the ARB, who shall serve at the Declarant's discretion; provided, however, Declarant may assign or delegate the right to appoint the members of the ARB to the Board prior to the expiration of the Declarant Period by written instrument filed with the Association. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARB, subject to any numerical or qualification requirements as may be set forth in the Bylaws, who shall thereafter serve and may be removed at the Board's discretion. Following the initial construction of improvements on the Units, there shall be a \$150 review fee for

review by the ARB of all applications for modifications.

### 9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant has prepared and may amend from time to time design and construction guidelines set forth in the Pinestone Design Guidelines ("Design Guidelines") and application and review procedures for the Property. Any Design Guidelines may contain general provisions applicable to all of the Property and may contain provisions applicable to certain categories of Units (Park North, The Rows and/or Multi-Plex) with respect to any improvements to or reconstruction of a Home by an Owner after initial construction. Any Design Guidelines will be intended to provide guidance to Owners regarding matters of particular concern and to the ARB in considering applications hereunder, but shall not be the exclusive basis for decisions of the ARB.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any Unit until an application for approval of the proposed work has been submitted to and approved by the ARB, as appropriate. The ARB may require the submission of application forms and information as it deems necessary to consider any application and may require multiple stages of application and review for any construction or modification.

In the event that the ARB fails to approve or to disapprove in writing any stage of an application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved unless an extension of such time period is agreed to by the reviewing body and the applicant.

(c) Basis of Approval. Review of the plans shall be based on general adequacy of site dimensions, conformity and harmony of the exterior design, location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites, topography, setbacks, and conformity to both the specific and general restrictions and covenants set forth herein, and in Design Guidelines. The ARB shall have the right to disapprove any submitted plans of any Unit if such plans are not in conformity with the provisions of this Declaration or the Pinestone Design Guidelines, or if the reviewing body, acting pursuant to Article 9 hereof in its discretion (which shall be exercised in a reasonable manner) determines that such plans are not in the best interest of the contemplated development of the Property as described by this Declaration. Decisions of the ARB shall be made by a Majority vote of all members of the ARB.

(d) Commencement and Completion of Reconstruction. Following submission and approval of plans for reconstruction following casualty or for modifications to existing structures, construction shall be commenced within such period as provided in the notice of approval. In the event construction of the work called for by the approved plans has not substantially commenced within the period set forth in the notice of approval, the approval shall be deemed expired, and no construction shall thereafter commence unless an extension is granted in writing by the ARB as set forth below. Following commencement of construction in accordance with the notice of approval, construction shall be substantially completed within one (1) year, unless an extension is granted in writing by the ARB as set forth below. If construction is not completed within such period, the Owner of the Unit shall be charged a fee, as a special assessment which shall become a lien against the Unit, of \$250 per month for each month following such one (1) year period and such Owner's rights as a Member of the Association (including without limitation, voting rights and the right to use the Common Areas) shall be suspended after such one (1) year period until the construction is completed. The ARB may, in its sole discretion, grant an extension if completion

of construction as required hereunder is delayed due to causes beyond the reasonable control of the Owner.

9.4 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5 Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures or from the requirements of this Declaration (provided, with respect to compliance with this Declaration, the variance relates to minor encroachments of improvements across easements or building setback lines) or when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall be valid unless in writing. A variance granted in connection with any particular application shall have no bearing on subsequent applications and shall not prevent the ARB from denying a variance in any other circumstance. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing may not be considered a hardship warranting a variance as determined in the sole discretion of the reviewing body.

9.6 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only and shall not create any duty to any person. Neither the Declarant, the Association, the Board, the ARB, nor any of their members, officers or directors, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Improvements are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the ARB, nor any committee, or member of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the Declarant, the Board, the ARB, and their members shall be defended and indemnified by the Association as provided in Section 4.7.

9.7 Enforcement.

(a) Any member of the ARB, or a representative thereof, shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit for the purpose of inspection to ascertain whether any Improvement is in violation of this Article. Any Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB, Owners shall, at their own cost and expense, remove such structure or Improvement and restore the Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the Unit as required, any authorized agent of the Board shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed. Entry for such purposes and in compliance with the Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the ARB by any means of enforcement described in Section 4.4. All costs of the foregoing, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit.

(b) Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained.

(c) Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article may be excluded by the ARB from the Property, subject to the notice and hearing procedures contained in the Bylaws.

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

## **ARTICLE 10: EXTERIOR AND OTHER MAINTENANCE**

10.1 General Exterior Maintenance. Except as otherwise specifically set forth in Article 5, Section 10.2, or otherwise herein, each Owner of a Unit shall be responsible for maintaining in good, safe and sightly order, and for repairing and replacing the same as reasonably necessary, such Owner's Unit and the exterior of all Improvements constructed, installed or placed on the Unit, including, without limitation, roofs, gutters, downspouts, exterior building surfaces (to include painting), sprinkler, drainage, lighting and other systems (to the extent not the responsibility of the Association or a governing authority or utility company), lawn, trees, shrubs, hardscaping, driveways, walks and other exterior improvements. In the event that the Owner neglects or fails to maintain such Owner's Unit and/or the exterior of the Improvements thereon in a manner consistent with other Units and dwellings in the Pinestone Residential Neighborhood, the Association may provide such exterior maintenance as required above; provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform, and the Owner shall have twenty (20) days from the date of said notice within which to perform such exterior maintenance. The determination as to whether an Owner has neglected or failed to maintain such Owner's Unit and/or Improvements thereon consistent with other Units and dwellings in the Pinestone Residential Neighborhood shall be made by the Board, in its sole discretion. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon the exterior of each Unit at all reasonable times and as reasonably required to perform exterior maintenance or repair work as provided in this Article.

10.2 Resident-Owned Townhome Exterior Maintenance. The Association shall provide exterior maintenance of the Resident-Owned Townhome Units and the Improvements thereto as required pursuant to Section 10.1, above, on behalf of the Owners of the Resident-Owned Townhome Units ("Townhome Maintenance"), the cost of which shall be a Townhome Expense subject to a Townhome Assessment under Section 8.3, above. Such maintenance may include, but shall not be limited to: (a) painting and/or staining of the exterior of the Townhome(s) as required from time to time; (b) repair, replacement, and care of: roofs, gutters, downspouts, exterior building surfaces, walks, mailboxes, fences installed by the Declarant, the Association or as part of any original construction, exterior post lights (excluding electricity therefor); and (c) yard and lawn maintenance, which maintenance shall include regular grass cutting, pruning of trees and shrubs, ground cover (excluding those items planted by an Owner which shall not be maintained by the Association), removal of grass clippings and dead plant materials, fertilizing and weed prevention, and maintenance and repair of the irrigation system, if any, installed on the Townhome Unit;

provided, however, such exterior maintenance shall not include maintenance of any area of a Townhome Unit which is inside an enclosed fenced area (regardless of gate access) or otherwise obstructed by the Owner or maintenance, repair or replacement of windows and doors (including, without limitation, glass surfaces, screens, caulking and hardware). Further, the Owner of any Townhome Unit may, at such Owner's election, plant and maintain flowers and other ornamental plants in the front and rear beds established by Declarant in developing the Townhome Unit, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the Unit and the remaining yard space. No such maintenance by an Owner of a Townhome Unit shall reduce the Townhome Assessment payable to the Association. Nothing set forth in this Section 10.2 shall apply to any of the McCarty & Guy Townhome Units, except as specifically set forth in Section 10.5, below.

10.3 Pest Control. The Association shall procure and maintain a contract with a licensed pest control company for pest control services to be provided to the Resident-Owned Townhome Units. The cost for such service contract shall be a Townhome Expense. No such maintenance by an Owner of a Resident-Owned Townhome Unit shall reduce the Townhome Assessment payable to the Association. Nothing set forth in this Section 10.3 shall apply to any of the McCarty & Guy Townhome Units, except as specifically set forth in Section 10.5, below. Should the Owner of a Resident-Owned Townhome Unit require a South Carolina Wood Infestation Report, the Owner shall pay the expense of such report.

10.4 Uniform Townhome Expenses Charged. As a matter of information to future Owners of Resident-Owned Townhome Units, Declarant discloses that due to different maintenance costs, including amounts of exposure to the elements, and other factors, different Townhome Buildings will require different levels or aspects of maintenance at different times. It is therefore in the best interest of the entire Association that all Resident-Owned Townhome Units be properly maintained, and the Association make a uniform charge of Townhome Assessment without regard to the actual cost of maintenance of any particular Townhome Unit or Townhome Building.

10.5 McCarty & Guy Townhome Buildings. Except as set forth below, the Association shall not be responsible for the exterior maintenance of or any pest control services for any McCarty & Guy Townhome Units within a McCarty & Guy Townhome Building, and the McCarty & Guy Townhome Owner shall be responsible for same. Upon the sale by McCarty & Guy Townhome Owner of one or more McCarty & Guy Townhome Units within a McCarty & Guy Townhome Building, the entirety of such Townhome Building shall be considered a Resident-Owned Townhome Building for all purposes under this Declaration, including Townhome Maintenance and pest control services (and the associated Townhome Expenses and Townhome Assessments).

10.6 Easements for Maintenance. The Association is hereby granted an easement for access to go upon any Unit, to the extent reasonably necessary, for the performance of repairs or maintenance which is the responsibility of the Association hereunder.

10.7 Party Walls of Townhome Units.

(a) Each wall which is built as a part of the original construction of Townhomes and placed on the dividing line between the Townhome Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to the negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the



Owners who make use of the wall in proportion to such use.

(c) If a party wall is damaged or destroyed by fire or other casualty, except to the extent covered by the property insurance carried by the Association, the Owner of either Townhome Unit of which the party wall is part may restore it and collect one half (1/2) of the reasonable cost thereof from the other Owner; provided, however, nothing contained herein shall prohibit either Owner from seek a different allocation of cost based upon a claim of contributory negligence or willful acts or omissions of the other Owner resulting in such damage.

(d) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Unit, shall constitute a lien against such other Owner's Unit, and shall pass to such Owner's successor in title.

(e) Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act or omission, causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

10.8 Encroachment Easements. To the extent applicable, each Unit shall be granted an encroachment easement over the adjacent Unit or the Common Area for the unintentional encroachment of structures or elements which are on or extend over the adjacent Unit or Common Area, including, without limitation, party walls, overhanging eaves, gutters, downspouts, or other fixtures or accessions in connection with the initial Improvements constructed on such Unit by Declarant or other builder, as a result of settling or shifting of any structure or as a result of any repair, construction, reconstruction, or alteration of any residence authorized by the ARB.

10.9 Structural Support. Every portion of a party structure which contributes to the structural support of the building is hereby burdened with an easement of structural support for the benefit of all other residences within the building(s).

## **ARTICLE 11: USE RESTRICTIONS**

11.1 Residential Use of Property. All Units shall be used for single-family, residential purposes only, and no business or business activity shall be carried on or upon any Unit at any time, except with the written approval of the Board; provided, however, that nothing herein shall prevent Declarant or any builder of homes in the Pinestone Residential Neighborhood approved by Declarant from using a Unit owned by Declarant or such builder for the purpose of carrying on business related to the development and sale of Units; and provided further that, to the extent allowed by the Zoning Ordinance—Pinestone PD, private offices may be maintained in dwellings located on any of the Units so long as such use is incidental to the primary residential use of the dwellings.

11.2 Setbacks and Building Lines. In no event shall any dwelling be erected and located upon any Unit closer to the front, rear and side property lines than those setback measurements, if any, shown on a Residential Subdivision Plat. Each dwelling which shall be erected on any Unit shall be situated on such Unit in accordance with the Zoning Ordinance—Pinestone PD indicated for each Unit and approved in writing by the ARB. Approval shall be received before commencement of lot clearing preparatory to construction unless either a variance shall have been granted by the ARB or Declarant shall have amended the Residential Subdivision Plat. In no event shall any dwelling be erected and located upon any Unit in a manner which violates the requirements and provisions of the Zoning Ordinance—Pinestone PD.

11.3 Walls and Fences. No fence or wall shall be erected except with prior written ARB approval.

11.4 Subdivision. Subdivision of a Unit into two (2) or more Units, the combination of two (2) or more Units to form one single Unit, or the changing of boundary lines of any Units are prohibited, except with the consent of the Board and the Declarant, if during the Declarant Period.

11.5 Terraces, Eaves and Detached Garages. For the purpose of determining compliance or noncompliance with the foregoing building line requirements, to the extent not inconsistent with the Zoning Ordinance—Pinestone PD or the Zoning Ordinance of the City of Travelers Rest, (a) terraces, stoops, eaves, wing-walls, and steps extending beyond the outside wall of a structure shall not be considered as a part of the structure; and (b) no side yard shall be required for any detached garage or accessory outbuilding which has been approved, in writing, by the ARB; provided, all such detached structures must be to the rear of the main dwelling and must not encroach upon an adjacent Unit.

11.6 Obstructions to View at Intersections. No part of any structure nor the lower branches of trees or other vegetation shall be permitted to obstruct the view at street intersections.

11.7 Delivery Receptacles and Property Identification Markers. The ARB shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as property identification markers.

11.8 Temporary Structures. No structure of a temporary nature (unless approved in writing by the ARB) shall be erected or allowed to remain on any Unit. No trailer, camper, shack, tent, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently; provided, however, this Section shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

11.9 Livestock and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Unit. Dogs, cats or other small household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes and they are kept otherwise in accordance with the City of Travelers Rest Ordinances. Such household pets must not constitute a nuisance or cause unsanitary conditions. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas or on a Unit without approval of the ARB and shall not be visible from roads or alleys. All pets must be kept on Units and shall be under leash at all times when in any portion of the Common Areas. No pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same. Upon the written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Article 11, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the Owner of a particular pet to remove such pet from the Pinestone Residential Neighborhood if such pet is found to be a nuisance or to be in violation of this Declaration. The Board shall have the further right to fine any Owner (in an amount not to exceed \$50.00 per occurrence) for the violation of these pet restrictions by such Owner or the Tenant, Occupant or Guest thereof, and such Owner shall be liable to the Association for the cost of repair of any damage to the Common Areas caused by the pet of such Owner or the Tenant, Occupant or Guest thereof. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due

with respect to such Unit.

11.10 Obnoxious or Offensive Activities. No obnoxious, offensive or illegal activities shall be carried on upon any Unit, nor shall anything be done thereon which is or may become an unreasonable annoyance or nuisance to the Owners of other Units in Pinestone. Without limiting the generality of the foregoing provisions, no exterior speakers (other than those which are part of outdoor televisions or home sound systems, provided the same are used at decibel levels which do not unreasonably interfere with use and enjoyment by other Owners of their respective Units), horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be used within the Pinestone Residential Neighborhood. Any Owner, or the Occupants, Tenants or Guests thereof, who dumps or places any trash or debris upon any portion of the Pinestone Residential Neighborhood shall be liable to the Association for the actual costs of removal thereof or the sum of \$250.00, whichever is greater, and such sum shall be added to and become a part of that portion of any Assessment next coming due with respect to such Unit.

11.11 Signs. No signs, banners or billboards shall be erected on any Unit, on any home, or within the Property unless prior written approval of the ARB is obtained. All signage shall be in compliance with the Pinestone Brand Identity Manual and sign ordinances of the City of Travelers Rest as approved for Pinestone. This restriction shall not apply to signs used to identify and advertise the Neighborhood as a whole, nor to signs for selling Units, provided such signs are approved by the ARB. Also, the provisions of this Article shall not apply to notices posted in connection with judicial foreclosure conducted with respect to first mortgages. The restrictions of this Section shall not apply to the Declarant

11.12 Aesthetics, Nature Growth, Screening, Underground Utility Service. Trees which have a diameter in excess of six inches (6") measured two feet (2') above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior approval, in writing, of the ARB, except those trees removed in initial construction with the prior approval of Declarant. Clotheslines, garbage cans and equipment shall be screened to conceal them from view of neighboring Units and streets. All residential utility service and lines to residences shall be underground.

11.13 Antennas. Antennas or satellite dishes may be installed on a Home on a Unit only after approval of the ARB, and no antennas or satellite dishes shall be visible from the front of the home or any abutting road within the Property. No free-standing antennas or satellite dishes may be placed on a Unit or used by an Owner.

11.14 Parking and Vehicles.

(a) Parking of the following vehicles within the Property is restricted: construction vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles. The foregoing vehicles may be parked only in enclosed garages approved in accordance with Article 9 of the Declaration or other areas as may be designated by the Board. Construction vehicles and equipment shall be exempt from this provision during daylight hours or for such period of time that is reasonably necessary for construction within a Unit or the Common Area, and the Board may institute Rules and Regulations regarding the permitted locations and times for parking of construction vehicles, as well as the points of ingress and egress for construction vehicles and other commercial vehicles.

(b) Operation of motorized vehicles on pedestrian ways, bike ways, sidewalks and greens maintained by the Association is prohibited unless specifically permitted in the discretion of the Board.

(c) Nothing herein contained shall violate any provision under the Americans with Disabilities Act or similar state or local law, ordinance or regulation.

11.15 Garbage and Refuse Disposal. Trash, garbage or other waste shall not be kept on a Unit except in sanitary containers designed for that purpose and approved by the ARB, screened from view from streets and other Units.

11.16 Changing Elevations. No Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Units, unless approved in writing by the ARB.

11.17 Lighting. Exterior lighting must be approved by the ARB. Seasonal decorative lights may be used only pursuant to the Rules and Regulations established by the Board from time to time.

11.18 Fuel Storage and Dispensing. On-site storage and dispensing of gasoline, heating, or other fuels is prohibited, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

11.19 Common Areas.

(a) Owners and their Tenants, Occupants and Guests shall use the Common Areas in compliance with the terms of this Declaration and all Rules and Regulations regarding the same. Without limiting the generality of the foregoing, Owners and their Tenants, Occupants and Guests shall refrain from any actions which deter from the enjoyment of the Common Areas by other Owners and their respective Tenants, Occupants and Guests. Prohibited activities shall include, without limitation, obstruction of Common Area, management of dogs or other pets in a manner which interferes with the use of the specified areas by others, playing of loud radios, electronic devices or musical instruments, holding of large gatherings without advance approval of the Board, loitering, and the use of facilities, tents or other temporary structures, stages, vending machines or facilities, except for events approved in advance by the Board and otherwise permitted under this Declaration.

(b) Special events held within the Property by any person other than the Declarant including, without limitation, educational, cultural, entertainment, promotional, sporting or social events expected to draw increased vehicle, bicycle and pedestrian traffic to the Common Areas, shall be approved in advance by the Board. Such approval shall be in the sole discretion of the Board.

11.20 Environmental Protection. Any activities which materially disturb or destroy the vegetation (other than routine landscape maintenance as permitted herein), wildlife, wetlands, or air quality within the Property or adjoining buffer zones or which use excessive amounts of water or which result in unreasonable levels of sound or light pollutions are prohibited. Restricted and prohibited activities include without limitation the following:

(a) Dumping of grass clippings, leaves or other organic debris, trash, petroleum products,

fertilizers, or other potentially hazardous or toxic substances anywhere on, near or from the Property is strictly prohibited, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff.

(b) Obstruction, re-channeling or any other interference with drainage flows after location and installation of drainage swales, storm sewers, or storm drains is prohibited, except that the Declarant and the Association shall have the right to re-channel the same; provided the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters or subsurface waters within the Property are prohibited.

(d) Living trees shall be removed from the Property only in conformance with plans approved in accordance with Article 9, the Governing Documents and applicable governmental rules, regulations and ordinances.

(e) All areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

11.21 Construction Activities. No construction, erection, or placement of any structure, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved is permitted, except in strict compliance with the provisions of Article 9 of the Declaration. The following restrictions shall also apply:

(a) After commencement of construction of any Improvements on a Unit, the Owner shall diligently prosecute the work thereon, to the end that the Improvements shall not remain in a partly finished condition any longer than reasonably and normally necessary for completion thereof.

(b) The Owner of the Unit on which Improvements are being constructed shall at all times keep streets and parking areas contiguous to the Unit free from excess dirt, mud, garbage, trash or other debris as may be occasioned by construction of the Improvements.

(c) Rocks and trees removed during construction of Improvements shall be disposed of in strict conformance with plans approved in accordance with Article 9.

(d) Storage of construction materials and equipment shall strictly conform to plans approved in accordance with Article 9. The foregoing materials and equipment shall not be permitted within any natural barriers established prior to construction.

(e) No overhead utility lines, including lines for cable, digital or similar television services, shall be permitted within the Property, except for temporary lines as required during construction and lines

installed by or at the request of Declarant.

11.22 Model Homes. Declarant, as well as certain builders of homes in Pinestone Residential Neighborhood, may construct and maintain a model home on any Unit it owns. A “model home” is a home used for the purposes of inducing the sale of other homes by such builder within the Pinestone Residential Neighborhood.

11.23 Driveways and Entrance to Garage. All driveways and entrances to garages shall be concrete or other substance approved in writing by Declarant or by the ARB and of a uniform quality.

11.24 Maintenance. Except as set forth in Section 10.2, above, which shall be the responsibility of the Association, the Owner of each Unit, improved and unimproved, shall keep the same free of all tall grass, undergrowth, dead trees, dangerous and dead tree limbs, weeds, trash, and rubbish, which Unit shall at all times be maintained in such a manner as to prevent the same from becoming unsightly, unsanitary or a hazard to health. In the event the Owner of any Unit fails to comply with the terms of this Section 11.24, the Declarant, the Board, and/or the Association shall have the right (but not the obligation) to go upon such Unit and to cut and remove tall grass, undergrowth, weeds, rubbish and other unsightly or undesirable things and objects therefrom and to do all other things and perform and furnish any labor necessary or desirable in its judgment to maintain the Unit in a neat and attractive condition, all at the expense of the Unit Owner, which expense shall become payable by the Owner to the Declarant and/or the Association on demand, and shall become a lien against such Unit. Neither the Declarant nor the Association, as the case may be, nor any of its agents, employees or contractors shall be liable for any damages to any person which may result from the exercise of any of the rights conferred upon them as set forth in this Section 11.24.

11.25 Firearm and Weapon Discharge; Fireworks. Any firearm discharge other than for defense or protection of one's life or property is prohibited within any portion of the Property. Firearms shall include rifle, gun, pistol, shotgun, black powder gun, pellet or BB gun, bow and arrow and any other weapon from which any bullet, shot or projectile may be discharged. The Board shall have no obligation to take action to prevent or stop such discharge. There shall be no public display of fireworks within the Pinestone Residential Neighborhood, regardless of whether a municipal permit could be obtained for the same. Any private use, firing or discharge of fireworks within the Pinestone Residential Neighborhood is strictly prohibited, except as specifically set forth in the City of Travelers Rest Code of Ordinances.

11.26 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Unit without the prior written consent of the ARB; however, in no event shall any above-ground swimming pool be permitted.

11.27 Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, delete and/or supplement the Rules and Regulations applicable to the Property; provided, however, the Rules and Regulations and any modifications thereto shall not conflict with this Declaration, the REA or the Act. Such Rules and Regulations shall be distributed to all Owners and registered Tenants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and the Tenants, Occupants and Guests thereof until and unless modified or rescinded by the Board. It shall be the responsibility of all Owners to inform such Owner's Tenants, Occupants and Guests of the Rules and Regulations, as may be amended from time to time.

## ARTICLE 12: EASEMENTS

In addition to certain easements granted or reserved elsewhere in this Declaration, the following easements and rights are hereby granted or reserved:

12.1 Utilities and Other Services. Easements for installation and maintenance of utility infrastructure and drainage facilities within the Property are reserved as indicated on recorded plats. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of Utilities, or which may change the direction of or otherwise obstruct or slow the flow of water through drainage channels in the drainage easements. Declarant or the Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of services or Utilities to the Common Area and/or Units.

12.2 Irrigation Facilities. Declarant hereby expressly reserves an easement for the benefit of Declarant or the Association for the installation and maintenance of irrigation lines, pipes, sprinkler heads and related equipment on, over and across each Townhome Unit.

12.3 Emergency Access. Declarant hereby reserves for its own benefit and for the benefit of each Owner and their respective successors and assigns non-exclusive, perpetual easements over any Unit and the Common Areas for emergency ingress, egress, and access.

12.4 Vehicular and Pedestrian Easements. Declarant hereby reserves for its own benefit and for the benefit of each Owner and their respective successors and assigns non-exclusive, perpetual easements, rights and privileges of vehicular and pedestrian ingress, egress, access, passage and use on, over and across all private roads, streets, drives, alleys, and walkways, if any, now existing or hereafter constructed, in, on, over, across and through the Common Areas.

12.5 No Rights in Public Generally. The easements and rights created herein do not and are not intended to and shall not be construed to create any easements or rights in or for the benefit of the general public.

12.6 Stream Preservation Easement Area. None of the Declarant, the Association or any Owner, or any Tenant, Occupant or Guest thereof, shall remove or destroy trees or natural vegetation from Stream Preservation Easement Area, nor shall any of the following be allowed within the Stream Preservation Easement Area: filling, draining, flooding, dredging, impounding, clearing, burning, cultivating, excavating, erecting, constructing, releasing wastes, or otherwise doing any work on, in or to the Stream Preservation Easement Area; changing the grade or elevation, impairing the flow or circulation of waters, or reducing the reach of waters. The following are expressly excepted from this paragraph: (a) recreational or educational activities consistent with the continuing natural condition of the Stream Preservation Area; (b) removal or trimming of vegetation hazardous to person or property, or of timber or vegetation downed or damaged due to natural disaster; (c) restoration or mitigation required under law; (d) construction and maintenance of one or more trails or paths on the Common Area portions for passive recreational uses; (e) placement of a fence not to exceed four feet (4') in height (and otherwise approved by the ARB) for the purposes of delineating a Unit property line, provided each fence crossing the Stream Preservation Easement Area must include a gate for access; and (f) discharging of storm water to and from such Stream Preservation Easement Area, provided such discharge shall not cause the flooding of such area or any

adjacent property. The Association shall have a right, in its discretion, to enforce the terms of this Section 12.6 against any person or entity violating or attempting to violate the same.

### **ARTICLE 13: LITIGATION, MEDIATION AND ARBITRATION**

13.1 Claims by Association, Generally. No judicial, arbitral or administrative proceeding shall be commenced or prosecuted by the Association unless approved in writing by at least seventy-five percent (75%) of the Members entitled to vote at a meeting duly called for such purpose. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided in Article 8 hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Article 14.5 hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

13.2 Claims Against Declarant, Declarant's Affiliates and McCarty & Guy Townhome Owner. Any claims that the Association or its Members may have against Declarant, any affiliate of Declarant, the McCarty & Guy Townhome Owner, or any contractor or architect involved in the design or construction of Improvements on Units or Common Areas, shall be solely and exclusively resolved in the following manner:

(a) Direct Negotiation. The parties shall initially attempt to resolve the dispute by direct negotiation in an amicable manner.

(b) Mediation. If the parties fail to reach agreement by direct negotiation within sixty (60) days from the commencement of negotiation, the parties will submit the dispute to non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association.

(c) Arbitration. If the parties cannot settle the dispute by non-binding mediation within sixty (60) days from the commencement of mediation, the dispute shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. In any such arbitration proceeding, any party may join any other party who participated in the design or construction of Unit Improvements in Pinestone who is or may be necessary to resolution of the dispute.

(d) Demand For Arbitration. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association within sixty (60) days after the parties fail to reach agreement by non-binding mediation.

(e) Discovery Before Arbitration. Prior to the arbitration, discovery shall be conducted in accord with the Federal Rules of Civil Procedure which shall apply to such discovery.

(f) Judgment. Judgment upon the award rendered by the arbitrators shall be final and may be entered in any court having lawful jurisdiction thereof.

(g) Architect's Affidavit. The Association shall make no claim for professional negligence, either directly or by way of cross complaint against any architect involved in the design or construction of Units or Common Areas, unless the Association has first provided such architect with a written affidavit executed by an independent consultant currently practicing in the same discipline as the architect and licensed in the State of South Carolina.



- (i) The above affidavit shall contain the name and license number of the certifier, specify the acts or omissions that the certifier contends are not in conformance with the standard of care for an architect performing professional services under similar circumstances, and state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care.
- (ii) The above affidavit shall be provided to the architect not less than thirty (30) days prior to the institution of any arbitration or judicial proceeding.
- (iii) The above affidavit shall, at a minimum, comply with the requirements set forth above and any contained under applicable law including §15-36-100 et seq. of the South Carolina Code of Laws.

#### **ARTICLE 14: DECLARANT'S RIGHTS**

14.1 Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Land Records. Notwithstanding the foregoing, Declarant may delegate certain of its rights and obligations (or those of the Association during the Declarant Period) to committees comprised of Members under such terms and conditions as Declarant may determine in its sole discretion, which such delegation need not be set forth in a recorded document and which shall be revocable at Declarant's discretion.

14.2 Development and Sales. The Declarant and others authorized by Declarant may maintain and carry on the Common Area and vacant Units owned by Declarant and/or the McCarty & Guy Owner, such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Property and/or the construction or sale of Units, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with Owners' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive days. The Declarant and others authorized by the Declarant shall have easements over the Common Areas and Units owned by the McCarty & Guy Townhome Owner for access, ingress and conducting such activities.

In addition, the Declarant and others authorized by Declarant may establish within the Property (except on Units sold to a party other than the McCarty & Guy Townhome Owner) such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Property and/or the construction or sale of Units, including but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Declarant Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and others authorized by the Declarant shall have easements over the Common Area and Units owned by the McCarty & Guy Townhome Owner for access, ingress, and egress and use of such

facilities.

Declarant may permit the use of any facilities situated on the Common Area by persons other than Owners without the payment of any use fees.

14.3 Improvements to Common Areas. The Declarant, and its employees, agents and designees, shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such Improvements to the Common Area as it deems appropriate in its sole discretion.

14.4 Additional Covenants. No declaration of covenants, conditions and restrictions, declaration of condominium, easement, or similar instrument affecting any portion of the Property shall be recorded during the Declarant Period without Declarant's written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Land Records. Except as set forth in Section 7.3 or 14.5, no recorded instrument affecting the Property may conflict with this Declaration, the Bylaws or the Articles.

14.5 Amendment of Declaration. During the Declarant Period, Declarant may amend this Declaration at any time without approval by the Owners or the Board (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Neighborhood Association or any other generally recognized institution involved in the guarantee or purchase and sale of mortgages, (ii) to clarify the Declaration's provisions or correct errors or inconsistencies, (iii) to subject additional property to this Declaration or in connection with Supplemental Declarations or to withdraw property from the Pinestone Residential Neighborhood (as otherwise permitted herein), (iv) to conform to any law then in effect, or (v) as Declarant otherwise deems advisable, except as otherwise explicitly set forth herein.

14.6 Right of Declarant to Disapprove Actions. During the Declarant Period, Declarant shall have the right to disapprove any Rules and Regulations or action, policy or program of the Association, the Board, and any committee which, in the sole judgment of Declarant, would tend to impair rights of the Declarant under the Governing Documents, or interfere with development of or construction on any portion of the Property, or diminish the level of services being provided by the Association.

(a) Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address Declarant has registered with the secretary of the Association, which notice complies with the Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at such meeting. Declarant may waive its right to receive notice in the same manner as provided in the Bylaws.

(b) Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor or any prospective action, policy or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become

effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

Declarant, its representatives or agents may make its concerns, thoughts and suggestions known to the Board, the Members and/or the members of any applicable committee. Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. No action, policy, or program shall be effective or implemented if Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

## **ARTICLE 15: GENERAL PROVISIONS**

### **15.1 Duration.**

(a) The covenants and restrictions of this Declaration shall run with title to the Property and shall be binding up and inure to the benefit of the Units, the respective Owners thereof and the Association, and except as otherwise limited by South Carolina law, this Declaration shall have perpetual duration. If South Carolina law limits the period during which covenants may run with the land, then this Declaration shall automatically be extended at the expiration of the period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Notwithstanding the provisions of Section 15.1, unless otherwise provided by South Carolina law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Units within the Property, which instrument is recorded in the Land Records; provided, however, regardless of the provisions of South Carolina law, this Declaration may not be terminated during the Declarant Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Units and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Property. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

**15.2 Amendment Following Declarant Period.** This Declaration may be amended at any time after the Declarant Period by an instrument signed by the President or Vice President and the Secretary of the Association, certifying approval in writing by Owners representing sixty-seven percent (67%) of the voting rights, provided, however, (a) provisions concerning voting rights and allocation of Assessments cannot be amended without the consent of sixty-seven percent (67%) of each category of affected Owners;

and (b) rights reserved to the Declarant may not be amended without the specific written consent of the Declarant.

## **ARTICLE 16: WORKING CAPITAL CONTRIBUTIONS**

### **16.1 Contributions Due Upon Transfer.**

(a) Generally. Except in the event of an Exempt Transfer, as defined in Section 16.2, the first Owner who purchases a Unit from Declarant, the McCarty & Guy Townhome Owner, or a builder approved by Declarant (such Owner, an “Initial Transferee”) and each Owner who purchases a Unit previously conveyed to an Initial Transferee (a “Subsequent Transferee”) shall pay to the Association, at the time title is conveyed to such Owner, the working capital contribution(s) as set forth herein, as applicable (the “Working Capital Contributions”). The purpose of the Working Capital Contributions is to ensure that the Association will have cash available for initial start-up expenses including, but not limited to Common Expenses, Townhome Expenses (if applicable), to meet unforeseen expenditures, or to acquire additional equipment and services deemed necessary or desirable by the Board. Working Capital Contributions are not advance payments of General Assessments and/or Townhome Assessments (if applicable) and shall have no effect otherwise on General Assessments and/or Townhome Assessments. Working Capital Contributions are payable at closing of the purchase of the Unit, and if not paid, the amount due shall be collectible as an Assessment as set forth in Article 8, shall bear interest at the rate set by the Board (subject to the maximum interest rate limitations of South Carolina law), and shall constitute a lien against such Initial Transferee’s or Subsequent Transferee’s Unit, as applicable. : a “General Working Capital Contribution”.

(b) General Working Capital Contribution. Except in the event of an Exempt Transfer, Initial Transferees and Subsequent Transferees of each Unit shall pay to the Association a “General Working Capital Contribution” in an amount equal to a three (3) months’ share of the then current General Assessment for the Unit, if an Initial Transferee, and seventy-five percent (75%) of the then current annual General Assessment for the Unit, if a Subsequent Transferee.

(c) Townhome Working Capital Contribution. In addition to the General Working Capital Contribution, except in the event of Exempt Transfers, Initial Transferees and Subsequent Transferees of each Resident-Owned Townhome Unit shall pay to the Association, a “Townhome Working Capital Contribution” in an amount equal to a three (3) months’ share of the then current Townhome Assessment for the Resident-Owned Townhome Unit, if an Initial Transferee, and seventy-five percent (75%) of the then current annual Townhome Assessment if a Subsequent Transferee. Upon the sale by the McCarty & Guy Townhome Owner of one or more McCarty & Guy Townhome Units within a McCarty & Guy Townhome Building, the entirety of such Townhome Building shall be considered a Resident-Owned Townhome Building for all purposes under this Declaration, including the Townhome Working Capital Contribution. In connection therewith, the McCarty & Guy Townhome Owner shall pay the Townhome Working Capital Contribution applicable to all other Units within such McCarty & Guy Townhome Building at the same time the Initial Transferee pays the Townhome Working Capital Contribution for the transferred Unit; provided however, such payment by the McCarty & Guy Townhome Owner shall be considered an advance payment of the Townhome Working Capital Contribution applicable to such Units, and there will be no additional Townhome Working Capital Contribution due in connection with the sale of such Units to the Initial Transferees thereof. Additionally, the McCarty & Guy Townhome Owner shall also pay to the Association at the time of the first sale to an Initial Transferee of a McCarty & Guy

Townhome Unit within a McCarty & Guy Townhome Building, a “Townhome Maintenance Reserve Payment” sufficient to fund an adequate maintenance reserve as determined by the Association in its commercially reasonable discretion based on a third-party building inspection report obtained by the Association at the McCarty & Guy Townhome Owner’s expense.

16.2 Exempt Transfers. Notwithstanding the foregoing, the Working Capital Contribution shall not be due and payable in connection with the following transfers (collectively, “Exempt Transfers”):

- (a) The transfer of a Unit from Declarant to the McCarty & Guy Townhome Owner;
- (b) The lease of a Unit to a Tenant;
- (c) The transfer of a Unit to the spouse of the Owner or a direct lineal descendant of the Owner or a co-Owner of the Unit, by devise, inheritance, settlement agreement, divorce decree or otherwise;
- (d) The transfer of a Unit to a trust whose beneficiaries include an Owner of the Unit, spouse of the Owner of the Unit and/or the direct lineal descendants of an Owner;
- (e) The transfer of a Unit to an entity in which the Unit Owner or co-Owners own collectively, directly or indirectly, no less than fifty-one percent (51%) of the ownership interest in such entity; and
- (f) The transfer of a Unit to a person or entity that owns, directly or indirectly, no less than fifty-one percent (51%) of the ownership interest in the Owner, if the Owner is an entity.

*Signature Page Follows*

IN WITNESS WHEREOF, the undersigned, has caused these presents to be executed under its hand and seal on this the 19<sup>th</sup> day of April, 2022.

Executed and declared  
in the presence of:

[Signature]  
Witness # 1

ROEH LLC, a South Carolina limited liability  
company

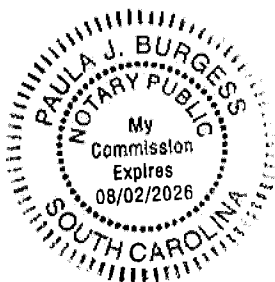
By: [Signature] [SEAL]  
Name: Jimmy Wilson  
Its: Manager

[Signature]  
Witness # 2 / Notary

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

ACKNOWLEDGMENT

I, the undersigned Notary Public of the County and State aforesaid, certify that Jimmy Wilson, as Manager of ROEH LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this 19 day of April, 2022.



[Signature]  
Notary Public for South Carolina  
Print Name: Paula J. Burgess  
My Commission Expires: 8-2-26

**Exhibit "A"**

Property Description

ALL that certain piece, parcel or lot of land containing approximately 23.26 acres, located in the City of Travelers Rest, Greenville County, South Carolina, as shown on that certain Recombination Plat for ROEH LLC, prepared by Arbor Land Design, dated March 16, 2022 and recorded March 29, 2022 in the Office of the Register of Deeds for Greenville County in Plat Book 1426 at Page 58.