THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Thomas W. McGee III, Circuit Court Judge

Case No. 2021-cp-10-01215
Appellant Case No. 2024-001813

Mansfield at Park West, Inc. ……Respondent,

v.

D.R. Horton, Inc. ……Appellant.

RECORD ON APPEAL
VOLUME I

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RECORD ON APPEAL

Appellant D.R. Horton – Respondent Mansfield at Park West

Appeal 2024-001813

VOLUME I

ORDERS

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STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN THE COURT OF COMMON PLEAS** **2021-CP-10–1215** **CONSENT ORDER FOR ARBITRATION**

This matter comes before the Court upon the Motion to Compel Arbitration of the Plaintiff, Mansfield at Park West, Inc., and the Motion to Dismiss of the Defendant, D.R. Horton, Inc. The Plaintiff and Defendant agree and consent to resolve all claims among the parties by binding arbitration.

Plaintiff and Defendant agree and consent to Plaintiff's claims against D.R. Horton, Inc., being referred to binding arbitration with a sole arbitrator to be agreed to upon the parties, and to the extent the parties cannot agree on an arbitrator then the Court will select the arbitrator.

Accordingly, and upon motion and by consent of the parties, IT IS HEREBY ORDERED that:

1) All said issues in dispute between Plaintiff and Defendant are referred to and shall be resolved by binding arbitration, including the Defendant D.R. Horton's Motion to Dismiss, with the arbitrator to also determine all procedural and scheduling issues with the arbitration.
2) The arbitration shall further be conducted by a sole arbitrator to be agreed to upon by the parties pursuant to the laws of the State of South Carolina and to the extent the parties cannot agree on an arbitrator then the Court will select the arbitrator.

3) The claims in this case are hereby stayed pending the arbitration, and this Court shall retain jurisdiction of this matter.

AND IT IS SO ORDERED.

WE SO MOVE:

THE CHAKERIS LAW FIRM

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Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Consent Order

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN ARBITRATION** **ORDER DENYING D.R. HORTON'S MOTION TO CLARIFY**

After careful consideration and review of D.R. Horton, Inc.'s Motion to Clarify and Plaintiff's Objection to D.R. Horton's Motion to Clarify, I hereby deny D.R. Horton, Inc.'s Motion to Clarify.

Thomas J. Wills, IV
Arbitrator

September 25, 2023

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**2021-CP-10–01215** **ORDER DENYING DEFENDANT'S MOTION TO VACATE AND CONFIRMING THE ARBITRATION AWARD**

This matter came before me for a hearing on July 12, 2024, upon a Motion to Vacate the Arbitration Award entered by Thomas J. Wills, IV, in this matter. After hearing arguments of counsel from both sides and reviewing the Motion, memoranda, exhibits, and all other evidence properly before the Court, for the foregoing reasons, Defendant, D.R. Horton, Inc.'s Motion to Vacate is hereby **DENIED** and the Award of the arbitrator is hereby **CONFIRMED**.

STANDARD OF REVIEW

"Arbitration is a favored method of settling disputes in South Carolina." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 75, 488 S.E.2d 335, 337 (1997) (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990); *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 333 S.E.2d 781 (1985)). "When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact." *Id.* at 76, 488 S.E.2d at 337 (citing S.C. Code Ann. § 15-48-180). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." *Id.* "Arbitration is not litigation carried on by other means." *Lauro v. Visnapuu*, 351 S.C. 507, 516, 570 S.E.2d 551, 555 (Ct. App. 2002) (citing *White v. Preferred Research, Inc.*, 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993)). "Judicial review of an arbitration award is

[therefore] limited in scope, and any attempt to convert arbitration into a trial-like judicial proceeding is looked upon with disfavor." *Id*. "'The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality.'" *Crouch Constr. Co. v. Causey*, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013) (quoting *Commonwealth Coatings Corp. v. Cont'l Cas. Co.,* 393 U.S. 145, 151 (1968)).

"In reviewing arbitration awards, 'the standards for judicial intervention are . . . narrowly drawn to assure the basic integrity of the arbitration process without meddling in it.'" *Id.* (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 681 (7th Cir. 1983)). "An award will be vacated only under narrow, limited circumstances, *inter alia*, 'when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law.'" *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009)). "However, for a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (citations omitted). "Case law presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Id.* (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). "An arbitrator's 'manifest disregard of the law,' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Id.* (citing *Weimer v. Jones,* 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)). "Factual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers." *Id.* at 242, 676 S.E.2d at 324.

"Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.' If the grounds for the award can be inferred from the facts, the award should be confirmed." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990)). To vacate the arbitration award, DRH must show "'something beyond and different from a mere error of law or failure on the part of arbitrator[] to understand or apply the law.'" *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990) (quoting *Trident Tech. College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 108-109, 333 S.E.2d 781, 787 (1985)).

A. REASONED AWARD

D.R. Horton contends that the parties had an agreement for a reasoned award and that the reasoning in the award was insufficient. The Plaintiff contends that the award was reasoned, but that there was no requirement for a reasoned award because the arbitrator had the sole discretion as to the format of the award. The Consent Order for Arbitration gives the arbitrator sole discretion over all scheduling and procedural issues of the arbitration. This includes the format of the Award.

At the conclusion of the arbitration, the arbitrator asked the parties to submit proposed Awards. The Plaintiff submitted a proposed Award and DRH submitted three different alternative proposed Awards, with only one captioned DRH PROPOSED #2 with the Plaintiff prevailing. The arbitrator didn't choose the proposed awards submitted by either of the parties, but rather drafted his own Award. The arbitrator's Award format is substantially similar to the proposed awards submitted by both the Plaintiff and DRH's PROPOSED #2, with the main difference being the inclusion by the arbitrator of a lengthy discussion of significant factual findings in determining DRH was grossly negligent.

DRH argues that the Standing Section of the arbitrator's award lacks sufficient reasoning, yet the language of the Standing Section of the Award is essentially identical to DRH's own language in its DRH PROPOSED #2. The reasoning and findings contained in the Statute of Repose/Gross Negligence Section of the Award determining DRH's gross negligence and support the damage award is far more extensive than the four sentences DRH submitted in its Statue of Repose/Gross Negligence section of its DRH PROPOSED #2. Further, DRH's PROPOSED #2 contains no reasoning to support any awarded damages for which it now complains. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)).

The Consent Order for Arbitration also states that the laws of the State of South Carolina shall apply to the proceeding. The South Carolina Arbitration Act provides that the final award be in writing and signed by the arbitrator per Section 15-48-90, with which the arbitrator's Award complies. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)). DRH has failed to show that Mr. Wills manifestly disregarded the law, exceeded his authority, or violated the South Carolina Supreme Court's Code of Ethics for Arbitrators as it contends.

B. STANDING AND REAL PARTY IN INTEREST

The issue of Standing and Real Party in Interest is a matter of contract interpretation of the Declarations of Covenants, Conditions, and Restrictions and Second Amendment filed by the

Association. The Second Amendment was filed after obtaining seventy-five (75%) of the vote of the ownership with no objection from any owner. DRH had no ownership interest in the Mansfield community since 2011. To show that Arbitrator Wills manifestly disregarded the law, DRH has the burden of showing that Mr. Wills knew the law and intentionally refused to apply it – a standard that DRH has not met. "An arbitrator's 'manifest disregard of the law' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Gissel v. Hart,* 382 S.C. 235, 241, 676 S.E.2d 320, 323-324 (2009) (citing *Weimer v. Jones*, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)).

DRH asserts that no amendment to the Covenants is allowed for a period of twenty years after initial filing of the Covenants. The Plaintiff contends this relates to the duration of the governing documents and the manner in which the effective duration can be extended. The arbitrator found no prohibition against amending the content of the Covenants prior to the expiration of the effective twenty-year duration of the Covenants. Article I of the covenants provides the following:

> No Person shall record additional covenants, conditions, or restrictions affecting any portion of Mansfield at Park West without declarant's written consent, so long as Declarant owns any portion of the real property described in Exhibit "A" or "B". *Thereafter, Owners representing at least Seventy-Five (75%) percent of the Townhome Association's total votes must consent to such additions.* Any instrument Recorded without the required consent is void and of no force and effect.

Article I, § 1.3 (emphasis added).

It is undisputed that DRH has not been an owner or a member of the homeowners' association since 2011 and has not had voting rights or a relationship with the Association since approximately 2011. Therefore, it was not a manifest disregard of the law by the arbitrator to find that the Second Amendment, which was recorded with consent of at least 75% of the owners,

followed the rules outlined within the Covenants.

Given the content of the Award, the arbitrator's findings, and the evidence on which he based his rulings, DRH has not met its burden of proving a manifest disregard of the law.

For the reasons set forth above and in Plaintiff's memorandum, it was not a manifest disregard of the law for the arbitrator to find that the Plaintiff had the requisite standing and was a real party in interest. "Case law presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). The question is not whether the arbitrator made a wrong decision or made an error in construing or applying the law. Under South Caroling law, DRH has the burden of showing that Mr. Wills knew the law and intentionally refused to apply it. DRH has not met its burden or met this standard.

C. DAMAGES

The evaluation of the evidence and factual determination is in the sole purview of the arbitrator. "[W]hen a dispute is submitted to arbitration, the arbitrator[] shall determine questions of both law and fact." S.C. Code Ann. § 15-48-180. Disagreeing with the factual determination of the arbitrator is not grounds to vacate an arbitration award. "Factual and legal errors by arbitrators do not constitute an abuse of powers, and the court is not required to review the merits of the decision so long as the arbitrators do not exceed their powers. A party may not attempt to relitigate the merits of the arbitrators resolution of the arbitrable issues under the guise of questioning the arbitrators' power." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 76-77, 488 S.E.2d 335, 338 (1997).

In its Motion to Vacate, DRH argues that the Plaintiff's damages are speculative and that the arbitrator manifestly disregarded the law in awarding the Plaintiff damages. This argument was also raised by DRH and heard by the arbitrator. The arbitrator disagreed and didn't find DRH's position credible based on the evidence presented and certain inconsistencies in testimony of DRH's witnesses.

The arbitrator heard testimony of a qualified expert engineer, Russell T. Mease, P.E., regarding the building code and industry standard violations related to the installation of building components at issue in this case. Mr. Mease also testified that during his three (3) days of investigation of the construction at Mansfield, he identified evidence that siding had fallen off the buildings from being improperly installed, shingles had been replaced because of apparent shingle blow-off due to improper installation, and water entering into the wall assemblies. Further, DRH's own engineer expert, Steven Moore, P.E., did not perform intrusive testing and admitted there was evidence of water entering into the wall assemblies in ten (10) out of the eleven (11) different window locations where Mr. Mease removed siding to observe construction conditions. Plaintiff's estimating expert, local contractor Scott Dow, testified as to the cost of repair based on the repair scope and recommendations of engineer Mr. Mease and his own experience. The experts testified to the defects and damages to a reasonable degree of certainty.

Although there was evidence that water had intruded into the walls at ten (10) out of the eleven (11) locations where siding was removed during Mr. Mease's investigation, along with evidence that siding had cracked and fallen off and shingles had blown off of the buildings because of improper installation, DRH contends that the damages are speculative because the buildings are generally performing. "A builder is no less blameworthy in such a case where lady luck has smiled upon him and no physical harm has yet occurred." *Kennedy v. Columbia Lumber & Mfg. Co.*, 299

S.C. 335, 347, 384 S.E.2d 730, 737 (1989). Therefore, "[a] builder may be liable to a home buyer in tort despite the fact that the buyer suffered only 'economic losses' where: (1) the builder has violated an applicable building code; (2) the builder has deviated from industry standards; or (3) the builder has constructed housing that he knows or should know will pose serious risks of physical harm." *Id.* at 347, 384 S.E.2d at 738.

DRH does not meet its burden to vacate the arbitration Award in claiming the damages awarded are speculative. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)).

D. GROSS NEGLIGENCE

DRH contends it was not grossly negligent and seeks to disturb the factual findings of the arbitrator. "In most cases, gross negligence is a factually controlled concept whose determination bests rests with the jury." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 556 S.E.2d 536, 545 (2002). Further, a violation of a building code may be admissible as evidence of gross negligence. S.C. Code Ann. § 15-3-670(b). The finding that DRH was grossly negligent is a factually controlled inquiry that rests solely with the arbitrator and is not grounds to vacate an arbitration award.

Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. *Gissel v. Hart*, 382 S.C. 235, 242, 676 S.E. 2d 320, 324 (2009) (citing *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997)). DRH has not meet its burden to vacate the arbitration award in claiming the arbitrator erred in finding DRH grossly negligent.

CONCLUSION

For all the reasons stated above, Defendant, D.R. Horton, Inc.'s Motion to Vacate or modify is **DENIED**. Having heard and resolved the Motion to Vacate the arbitration award, the Court **CONFIRMS** the arbitration award under S.C. Code Ann. § 15-48-130(d).

IT IS SO ORDERED.

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Confirm

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1001215

Mansfield At Park West Inc
PLAINTIFF(S)

Dr Horton Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The court has received and reviewed Defendant D.R. Horton's Motion to Alter or Amend the September 4, 2024, Order Denying Defendant's Motion to Vacate Arbitration Award. After reviewing the Motion, accompanying affidavit of John T. Crawford, prior submissions by the parties, and other matters properly before the court, I respectfully deny the Motion to Alter or Amend.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/03/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Electronic Form 4

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN ARBITRATION** **AWARD**

This matter came before me on July 26 and 31, 2023, for an arbitration hearing pursuant to the Consent Order dated July 27, 2021, and entered by the Honorable R. Ferrell Cothran, Jr. The Plaintiff alleges that the Defendant was grossly negligent in the construction of the townhomes at Mansfield at Park West as it relates to the installation of cementitious siding (siding), roof shingles, J channel windows, and the premature deterioration of the wood fencing. Plaintiff contends these defects violate the building code, manufacturers' installation instructions and industry standards. Defendant admits that there may be violations of manufacture's installation instructions and the building code but argues any such violations were only minor deviations and immaterial. Defendant further argues that any water intrusion, damage below window locations and/or deteriorated fencing are a result of lack of maintenance which is not its responsibility, and the overall performance of the buildings is satisfactory. Additionally, the Defendant argues the Plaintiff lacks standing to pursue this claim and that the Statute of Repose bars any recovery as it was not grossly negligent. Both parties introduced substantial evidence of the cost of repair for the siding, shingles and J Channel by their respective qualified experts.

I. STANDING

I have reviewed the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West, along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. After such consideration, I find the Plaintiff has standing to pursue the claims it has asserted.

II. STATUTE OF REPOSE

Plaintiff presented evidence and testimony by qualified experts of violations of the building code, manufacturers' installation instructions and industry standards that constituted evidence of gross negligence. Through the expert testimony of Russell T. Mease, P.E.(Mease) and Scott W. Dow(Dow), regarding code requirements relating to the installation of the cementitious siding, the roofing shingles and the windows, the plaintiff's presented proof that the Defendant engaged in grossly negligent conduct with respect the installation of those components of the project. In his testimony, Mease established that the defendant had an obligation to ensure that the project would be built in compliance with the applicable building codes. He also testified that the manufacturer's instructions are part of the building code.

As to the siding, Mease and Dow testified that the applicable building code (including the manufacturer's instructions) required that the fasteners (nails) were to be nailed into the studs. On inspection Mease found that 87% of the fasteners were not nailed into the studs (Defendant's expert did not dispute this estimate). Defendant's superintendent, John Disk testified that at the time the project was under construction, he was of the belief that the building code and manufactures instructions required that the siding be nailed into the studs. He so testified in his deposition. In his testimony at the arbitration hearing before for me, he stated that he had changed his opinion and had decided that the siding was not required to be nailed into the studs. Defendant's

Vice President for Operations of Charleston and Hilton Head, Ronald Keith Bunner also testified that at the time the project was under construction that he was of the opinion the siding was supposed to be nailed into the studs and expressed that opinion in his deposition. He too changed his mind and testified at the arbitration hearing that nailing into the studs is not required. Although the defendant did not perform the installation itself, it had a duty to supervise the responsible subcontractor. Plaintiff presented expert testimony from Dow that the Defendant had a duty to properly supervise and oversee the project, this would include periodic inspection of the siding, roof and window installations. He testified that in his opinion the Defendant was grossly negligent as to the supervision of the installation of the siding, roofs and windows. According to the testimony, a supervisor would only have had to step inside the building from time to time to observe the nails protruding, having not struck the studs. To have failed to detect a small percentage of improper nailing might constitute negligence. I find that to have failed to detect 87% of the code violations regarding the nailing constitutes gross negligence. According to the testimony and evidence, despite the improper nailing, most boards have stayed in place and are not allowing water intrusion. However, plaintiffs experts testified that nailing into the studs enhances the structural integrity of the buildings to guard against damage from extreme wind conditions which exist in this area. The damage created by the nearly complete failure to meet the building code and manufacturers requirements is that the buildings are more subject to failure in extreme wind conditions.

Regarding the roof installation, plaintiffs' experts testified that 86% of the roof shingles were nailed improperly, in violation of code requirements. Defendant did not present evidence to challenge this percentage of failure. The defendant takes the position that since the roofs have only failed in a limited number of areas and that limited evidence of water intrusion has been found,

that the improper nailing has caused no appreciable damage. However, the plaintiffs' expert testimony established that the shingles are more prone to fail in high wind conditions than they would be if they had been nailed properly. The defendant was not directly responsible for the installation of the roof. However, the expert testimony established that the defendant had supervisory responsibility. Failure to detect a small percentage of the roof nailing code violations might be understandable or may have constituted mere negligence. However, I find that failure to detect that 86% of the roofing nails were nailed in violation of the building code requirements constitutes gross negligence. Defendant argues that the shingles have substantially performed their function in that there have been no widespread leaks from the roof. Defendant also points out that the warranty on the shingles is nearing its expiration. The testimony establishes that there have been some shingles that have been replaced over time. Some reduction in the cost of replacement is appropriate and will be reflected in the award.

Regarding the windows, Plaintiffs' experts presented testimony and evidence that the windows installed throughout the project were not appropriate for use with cementitious siding. Plaintiffs' construction expert, Dow, testified that as a result of the incompatibility of the windows with the siding, the windows cannot be properly maintained. The Defense presented expert testimony that a satisfactory fix for this problem could be designed. This testimony is unpersuasive. The superintendent's conduct in failing to detect that 100% of the windows installed in this project were not designed to be installed with cementitious board, but rather were designed to be installed with vinyl siding, constitutes gross negligence.

Regarding the fencing, Plaintiffs' presented photographs of fencing which shows substantial rot in some places. However, the record does not support a finding of negligence or gross negligence on the part of the Defendant with regard to the fencing.

I find the Plaintiff has met the gross negligence exception of S.C. Code Ann. § 15-3-670, and therefore, the Statute of Repose is not a complete bar to the Plaintiff's claims as to the siding, roof, and windows.

III. ACTUAL DAMAGES

The Plaintiff is awarded actual damages in the amount of $3,057,112.48 against D.R. Horton, Inc., for its claims of gross negligence related to the cementitious siding, roof shingles and J channel windows.

With respect to the claims relating to the fencing I find in favor to the Defendant DR Horton and award no damages.

Thomas J. Wills, IV
Arbitrator

August 12, 2023

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021 **CP-**10-01215

Mansfield at Park West, Inc.
PLAINTIFF(S)

D.R. Horton, Inc.
DEFENDANT(S)

Submitted by: Alicia D. Pullano	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
Mansfield at Park West, Inc.	D.R. Horton, Inc.	$3,057,112.48
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Form 4

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT** **2021-CP-10–____** **SUMMONS** **(ARBITRATION DEMANDED)**

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers, at 234 Seven Farms Drive, Ste. 128, Daniel Island, South Carolina, 29492, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE CHAKERIS LAW FIRM

By: s/ *Alicia D. Pullano*
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Attorneys for Plaintiff

Charleston, South Carolina
Dated: March 12, 2021

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT** **2021-CP-10–____** **COMPLAINT** **(ARBITRATION DEMANDED)**

The Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West, and amendments thereto, requires that disputes arising from the development, construction and sale of the townhomes be resolved through final and binding arbitration. As such, the Plaintiff demands arbitration of its claims against D.R. Horton, Inc. The Plaintiff above named, complaining of the Defendant above named, would allege and show as follows:

PARTIES

1. The Plaintiff, Mansfield at Park West, Inc., is a nonprofit South Carolina corporation that, by virtue of the Declaration of Covenants, Conditions and Restrictions, including amendments thereto, filed with the Register of Mesne and Conveyance for Charleston County is charged with, amongst other things, the right and obligation of pursuing claims for construction defects to the exterior building components of all townhomes and common elements of the townhome community known as Mansfield at Park West located in Charleston County, State of South Carolina.

2. That, upon information and belief, Defendant, D.R. Horton, Inc., is a corporation organized in the State of Delaware conducting business in Charleston County, State of South Carolina, and at all times relevant hereto was engaged in the design, development, construction

and/or repair of residential housing and specifically, designed, developed, constructed and/or repaired the townhome community known as Mansfield at Park West.

JURISDICTION

3. This Court has jurisdiction over the parties and subject matters hereto in that the allegations involve the development, construction and/or repair of the townhomes known as Mansfield at Park West located in Charleston County, State of South Carolina. This Court should compel binding arbitration on the Plaintiff and Defendant and appoint an arbitrator for final and binding determination of this dispute and the Court has and should retain jurisdiction over this matter.

FACTUAL BACKGROUND

4. The Defendants are under a duty to develop, construct and/or repair the townhomes known as Mansfield at Park West in accordance with the applicable building code and construction industry standards.

5. That the Plaintiff recently became aware of defects and deficiencies at the project.

6. This project was substantially completed within the applicable time period as set forth in Section 15-3-640, Code of Laws of South Carolina, 1976, as amended, but to the extent the townhomes and buildings in this project were not substantially completed within the applicable time period, this action is not subject to the limitations set forth in Section 15-3-640, Code of Laws of South Carolina, 1976, as amended, because, *inter alia*:

a. Defendant is guilty of fraud, gross negligence, or recklessness in providing components, in furnishing and manufacturing materials, in performing or furnishing the supervision, testing, or observation of construction, and/or in construction and/or development of the project, and/or

b. The damages claimed herein were by their nature not discoverable in the exercise of reasonable diligence at the time of their occurrence; and were the result of exposure to a harmful or injury producing substance, element or particle over a period of time.

7. That as a result of the various defects and deficiencies relative to the development, construction and/or repair of the project, the Plaintiff has been damaged and will be required to expend large sums of money to repair, correct, replace, and reconstruct various parts and components of the townhomes and reconstruct major portions of the townhome, and have been exposed to, and will be subject to loss of use and enjoyment, and depreciation of the value of its property.

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness)
(AS TO D.R. HORTON, INC.)

8. Plaintiff repeats and re-alleges Paragraphs 1 through 7 above as if fully set forth verbatim.

9. The Defendant, by and through its agents, servants and employees undertook and was under a duty to develop, construct, build, repair and inspect the construction of the townhomes and buildings in accordance with the applicable building code, construction industry standards and practices and in accordance with all requirements imposed by the laws and statutes of the State of South Carolina.

10. The Defendant, D.R. Horton, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton, in developing, constructing and/or repairing the townhomes, buildings and common areas at issue. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, includes but is not limited to the following particulars, to-wit:

a. In failing to use due care in the development, construction and repair of the townhomes at issue;
b. In improperly installing and constructing the exterior wall and roof systems, and related flashings and weather proofings;
c. In improperly installing the windows, siding, fencing, related flashings and the secondary weather barrier on and/or to the townhomes;
d. In failing to proper install and integrate the weather barrier, flashings and water management system;
e. In failing to properly frame the townhomes;
f. In failing to properly install the shingled roofing and shingles that are prematurely failing;
g. In developing, constructing and repairing townhomes which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in damage to the townhomes, buildings and building components;
h. In developing, constructing and repairing the townhomes and buildings in violation of the applicable building codes, standard building practices and accepted construction industry standards and practices;
i. In failing to properly install the siding and trim;
j. In failing to properly supervise construction;
k. In failing to properly coordinate trades including subcontractors;
l. In failing to act as a reasonable person would in circumstances then and there prevailing;
m. In failing to recognize and disclose the deficiencies, and failing to construct an adequate exterior building envelope free from defect;
n. In failing to properly install the siding, windows, roofing, framing, water management system, weather barrier, and all related flashings and components, which has resulted in water damage to the sheathing, framing and damage to other building components; and
o. Other deficiencies or failures as will be proven at trial.

11. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, the Plaintiff has suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes of the water intrusion and conditions conducive to water intrusion, and construction defects and resulting damages and failures set forth above along with having to spend substantial sums of money in order to renovate, correct, repair and restore the

exterior of the buildings and townhomes and common areas at issue. Additionally, the Plaintiff has been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded and continues to intrude into the subject buildings and townhomes causing and resulting in damage to walls, deterioration, and other damages to the finishes and structural elements of the buildings and townhomes. Each year since completion new areas of damage occurred, separate and apart from any damage already in progress of occurring. All of which has or will require the Plaintiff to expend great amounts of money to correct these defects and the damages resulting therefrom.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty of Habitability, Breach of Warranty Against Latent Defects, Breach of Warranty of Workmanlike Services, Breach of Warranty for Fitness for a Particular Purpose, Breach of Warranty of Merchantability and Serviceability, and Breach of Express Warranty)
(AS TO D.R. HORTON, INC.)

12. Each and every allegation contained in Paragraphs 1 through 11 above are incorporated herein by express reference as though fully set forth.

13. That the Defendant implicitly and/or expressly warranted and provided warranties that the subject buildings, townhomes and common areas would be habitable and fit for their intended uses, and that said buildings and townhomes would be developed, constructed, and/or repaired in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, and accepted construction industry standards applicable thereto and that the subject buildings, townhomes and common areas would be merchantable, free from latent defects and fit for the particular purpose for which the buildings, townhomes and common areas were developed, constructed, built and sold.

14. That the Defendant breached said warranties by developing, constructing, supervising and/or failing to supervise, repairing and/or inspecting the construction of the subject buildings, townhomes and common areas in such manner as to be in violation of applicable building codes and not in conformance with accepted construction and industry standards.

15. As a direct and proximate result of the Defendant's breach of these warranties, the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings, townhomes and common areas. Additionally, the Plaintiff has been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded and continues to intrude into the subject buildings and townhomes causing and resulting in damage to walls, deterioration, and other damages to the finishes and structural elements of the townhomes. Each year since completion new areas of damage have occurred, separate and apart from any damage already in progress of occurring. All of which has or will require the Plaintiffs to expend great amounts of money to correct these defects and the damages resulting therefrom.

FOR A THIRD CAUSE OF ACTION
(Unfair Trade Practices)
(AS TO D.R. HORTON, INC.)

16. Each and every allegation contained in Paragraphs 1 through 15 above are incorporated herein by express reference as though fully set forth.

17. The Defendant is a "person" within the meaning of South Carolina Code § 39-5-10(a).

18. The Defendant by its actions in developing, constructing, repairing, supervising and overseeing construction activities are engaged in commerce within the meaning of South Carolina Code §39-5-10(b).

19. The Defendant, by its action(s) described hereinabove, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

20. The Defendant's act(s) are capable of repetition and, upon information and belief and in accord with the allegations herein, have been repeated.

21. The Defendant's conduct affects the public interest of the people of South Carolina.

22. The Defendant knew or should have reasonably known that its conduct violated the Unfair Trade Practices Act.

23. As a direct, foreseeable and proximate result of the Defendant's unfair and deceptive practices, the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings, townhomes and common areas. Additionally, the Plaintiff has been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded and continues to intrude into the subject buildings and townhomes causing and resulting in damage to walls, deterioration, and other damages to the finishes and structural elements of the buildings and townhomes. Each year since completion new areas of damage occurred, separate and apart from any damage already in progress of occurring. All of which has or will require the Plaintiff to expend great amounts of money to correct these defects and the damages resulting therefrom.

FOR A FOURTH CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)
(As to D.R. Horton, Inc.)

24. Each and every allegation contained in Paragraphs 1 through 23 above are incorporated herein by express reference as though fully set forth.

25. The Defendant, D.R. Horton, Inc., in its capacity as developer and seller of Mansfield at Park West owed fiduciary and fiduciary-like duties to the Plaintiff.

26. The Defendant, D.R. Horton, Inc., was bound to act honestly and in good faith and with full disclosure with regards to all matters relating to the development and sale of the townhomes and buildings.

27. Given the existence of the Fiduciary and Fiduciary-like duties, the burden is on the Defendant, D.R. Horton, Inc., to prove the appropriateness of their actions with and to the Association.

28. The Defendant, D.R. Horton, Inc., attempted to circumvent their legal obligations and duties to the Plaintiff and to benefit itself at the Plaintiff's expense by, among other things, by failing to turn over the townhomes, buildings, and common elements to the Association in a defect free condition.

29. The Defendant, D.R. Horton, Inc., breached their fiduciary duty owned to the Plaintiff by the following:

a. In failing to act in good faith and with due regard to the interests of the Plaintiff;
b. In failing to ensure that the buildings from which they profited complied with the applicable building code, industry standards, and state law;
c. In failing to disclose that the buildings from which they profited were not constructed in compliance with the applicable building code, industry standards, and state law;

d. In failing to adequately perform its duties and responsibilities set forth in the Mansfield at Park West Covenants and Bylaws;
e. In making decisions for the Plaintiff that benefited their interests at the expense of the Plaintiffs;
h. In negligently performing their duties; and
i. In such other acts which will be shown through the course of discovery and arbitration.

30. The Defendant, D.R. Horton, Inc., further breached its fiduciary duties to the Plaintiff by failing to take steps to remedy the foregoing wrongs while controlling the Association.

31. Plaintiff is informed and believes it is entitled to a judgment against the Defendant, D.R. Horton, Inc., for actual, consequential, incidental and punitive damages and the costs of this action in an amount to be determined by the trier of fact.

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully prays that this Court compel the Plaintiff and Defendant, D.R. Horton, Inc., to arbitration for a final and binding determination of this dispute, that this Court appoint an arbitrator and that this Court retain jurisdiction over this matter; and for such other and further relief as this Court may deem just and proper.

THE CHAKERIS LAW FIRM

By: s/ *Alicia D. Pullano*
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Attorneys for Plaintiff

Charleston, South Carolina
Dated: March 12, 2021

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT** **2021-CP-10–01215** **PLAINTIFF'S MOTION TO COMPEL ARBITRATION**

YOU WILL PLEASE TAKE NOTICE that, on or after ten (10) days from the date hereof, at such time and place as the Court shall direct, the undersigned will, and does hereby, move this Honorable Court for an order staying and compelling arbitration against Defendant, D.R. Horton, Inc.

The Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West, and amendments thereto, requires that disputes arising from the development, construction and sale of the townhomes be resolved through final and binding arbitration. All claims between Plaintiff and D.R. Horton, Inc., should be referred to binding arbitration. This Court should compel binding arbitration on the Plaintiff and Defendant and appoint an arbitrator for final and binding determination of this dispute and the Court has and should retain jurisdiction over this matter.

THE CHAKERIS LAW FIRM

By: s/ *Alicia D. Pullano*
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Attorneys for Plaintiff

Charleston, South Carolina
Dated: March 12, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
MANSFIELD AT PARK WEST, INC.,	)	**DEFENDANT D.R. HORTON INC.'S ANSWER TO PLAINTIFF'S COMPLAINT**
PLAINTIFF,	)	(JURY TRIAL DEMANDED)
vs.	)	
D.R. HORTON, INC.,	)	
DEFENDANT.	)	

COMES NOW Defendant D.R. Horton, Inc. ("D.R. Horton" or "Defendant"), by and through its undersigned counsel, and hereby answers Mansfield at Park West, Inc.'s ("Plaintiff") Complaint as follows:

Each and every allegation set forth in Plaintiff's Complaint, not expressly admitted herein, is hereby denied.

FOR A FIRST DEFENSE
(Answer to Complaint)

1. Paragraph 1 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same and demands strict proof thereof.

2. D.R. Horton admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. Paragraph 3 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same and demands strict proof thereof.

4. Paragraph 4 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same and demands strict proof thereof.

5. The allegations contained in Paragraph 5 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiff's Complaint and, therefore, denies the same.

6. D.R. Horton denies the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. D.R. Horton denies the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Paragraph 8 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

9. Paragraph 9 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same and demands strict proof thereof.

10. D.R. Horton denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. D.R. Horton denies the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12. Paragraph 12 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

13. Paragraph 13 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same and demands strict proof thereof.

14. D.R. Horton denies the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. D.R. Horton denies the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. Paragraph 16 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

17. Paragraph 17 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same and demands strict proof thereof.

18. D.R. Horton denies the allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. D.R. Horton denies the allegations contained in Paragraph 19 of Plaintiff's Complaint.

20. D.R. Horton denies the allegations contained in Paragraph 20 of Plaintiff's Complaint.

21. D.R. Horton denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22. D.R. Horton denies the allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. D.R. Horton denies the allegations contained in Paragraph 23 of Plaintiff's Complaint.

24. Paragraph 24 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

25. Paragraph 25 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same and demands strict proof thereof.

26. Paragraph 26 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same and demands strict proof thereof.

27. D.R. Horton denies the allegations contained in Paragraph 27 of Plaintiff's Complaint.

28. D.R. Horton denies the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29. D.R. Horton denies the allegations contained in Paragraph 29 of Plaintiff's Complaint.

30. D.R. Horton denies the allegations contained in Paragraph 30 of Plaintiff's Complaint.

31. D.R. Horton denies the allegations contained in Paragraph 31 of Plaintiff's Complaint.

32. D.R. Horton denies all remaining allegations of the Complaint, including Plaintiff's Prayer for Relief as set forth in the Paragraph beginning "WHEREFORE" which claims entitlement to actual damages, attorneys' fees, costs, and any other relief and prays that this action against D.R. Horton be dismissed.

FOR A SECOND AFFIRMATIVE DEFENSE
(Failure To State A Claim Or Cause Of Action)

33. D.R. Horton alleges that Plaintiff's Complaint fails to sufficiently constitute a cause of action against D.R. Horton or fails to state facts upon which a claim can be based.

FOR A THIRD AFFIRMATIVE DEFENSE
(Recovery Reduced Or Eliminated By Failure To Mitigate)

34. D.R. Horton alleges that any recovery by Plaintiff is barred by its failure to mitigate damages, or that any recovery must be reduced by those damages that Plaintiff failed to mitigate.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Damages Claimed Attributable To Others)

35. D.R. Horton alleges that the damages suffered by Plaintiff, if any, were the result of the acts or omissions of other parties named and unnamed in this action, for which D.R. Horton bears no responsibility.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Damages Caused By Negligence Of Plaintiff)

36. D.R. Horton alleges that the damages suffered by Plaintiff, if any, were the result of the negligence and failure to use reasonable diligence in performing the acts required of Plaintiff.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Doctrine of Estoppel, Laches, and Waiver)

37. Upon information and belief, some or all of Plaintiff's claims are barred by the doctrines of estoppel, laches, and/or waiver.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Economic Loss)

38. Plaintiff's claims are barred in whole or in part by the Economic Loss Doctrine.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Notice and Opportunity to Cure)

39. Plaintiff failed to give Defendant timely and reasonable notice of some or all of the alleged defects and/or timely and reasonable opportunity to correct any alleged defects as required by warranty and/or S.C. Code Ann. § 40-59-810, *et seq.* and/or S.C. Code Ann. § 40-11-500, *et seq.* and the requirements and obligations set forth under Article XVII Dispute Resolution and Limitation of Litigation within the Declaration of Covenants, Conditions, and Restrictions for Mansfield Park West.

FOR A NINTH AFFIRMATIVE DEFENSE
(Set Off)

40. Any recovery by Plaintiff must be set off or reduced, abated, or apportioned to the extent that any other party's actions caused or contributed to damages, if any, or as otherwise provided pursuant to section 15-38-50 of the South Carolina Code.

FOR A TENTH AFFIRMATIVE DEFENSE
(Statutes of Limitations and Repose)

41. Plaintiff's claims may be barred by South Carolina's Statute of Limitations and/or Statute of Repose.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Warranty Period)

42. Plaintiff's claims may be barred as Plaintiff has failed to make its claims within the applicable warranty period.

FOR A TWELFTH AFFIRMATIVE DEFENSE
(Standing)

43. Plaintiff lacks standing to make its claims because it does not have an interest in the allegedly damaged property.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Lack Of Proximate Cause)

44. This Defendant alleges that any alleged conduct or omission by this Defendant was not the cause in fact or proximate cause of any injury alleged by Plaintiff.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Recovery Reduced By Comparative Fault)

45. This Defendant alleges that any recovery by Plaintiff is barred or must be reduced as a result of Plaintiff's comparative fault.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE
(Punitive Damages)

46. This Defendant would show that if the Plaintiff is making any claim for punitive damages, such violates the due process and equal protection laws of the United States Constitution and the Constitution of the State of South Carolina. Punitive damages are inappropriate in this case, as a matter of law and also because the Defendant did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages would be based. Defendant would show that any award of punitive damages is subject to the limitations set forth in South Carolina Code § 15-32-530.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE
(Disclaimer of Warranty)

47. Defendant contractually disclaimed all implied warranties with each individual homeowner.

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
(Lack of Duty)

48. Should defective work exist, which is expressly denied, on homes partially constructed by Defendant, the defective work could not have been discovered or prevented by Defendant and Defendant cannot be responsible for this work.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
(Subsequent Owner)

49. Defendant was a subsequent owner, not contractor, as to certain homes built by Co-Defendants Portrait Homes. Should defective work exist on these homes, which is expressly denied, Defendant had no prior knowledge of these defects and cannot be found liable for any defects later discovered.

FOR A NINETEENTH AFFIRMATIVE DEFENSE
(Right to add additional affirmative defenses)

50. D.R. Horton alleges that because the Third Amended Complaint herein is couched in conclusionary terms, D.R. Horton cannot fully anticipate all affirmative defenses that may be applicable to the within action. Accordingly, the right to assert additional affirmative defenses (including those alleged by Co-Defendants), if and to the extent that such affirmative defenses are applicable, is hereby reserved.

KENISON, DUDLEY, & CRAWFORD, LLC

s/ Jason M. Imhoff
Jason M. Imhoff, (S.C. Bar # 69355)
John T. Crawford Jr. (SC Bar #69682)
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Counsel for Defendant D.R. Horton Inc.

May 18, 2021

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT** **2021-CP-10–01215** **MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

The Plaintiff, Mansfield at Park West, Inc., by and through their attorneys, submits this memorandum of law in opposition to Defendant, D.R. Horton, Inc.'s Motion to Compel Dismiss.

INTRODUCTION AND SUMMARY

Plaintiff has filed a Complaint for Arbitration and a Motion to Compel Arbitration as the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West, and amendments thereto, requires that disputes arising from the development, construction and sale of the townhomes be resolved through final and binding arbitration. D.R. Horton, Inc. was the developer and general contractor for this townhome community and chose arbitration as the venue in which disputes between it and the Plaintiff should be adjudicated. Therefore, this Motion should be decided by the Court appointed arbitrator. Should the Court decide to hear D.R. Horton's Motion, Plaintiff has clearly pled facts upon which relief may be granted and has pled the major exceptions to the Statute of Repose. S.C. Code Ann. § 15-3-670 provides that the Statute of Repose is *not* available to a defendant guilty of gross negligence or recklessness in construction, and Plaintiff has fully alleged

gross negligence and recklessness, so that, after a review of the pleadings under 12(b)(6), this Court must deny this Motion.

FACTUAL BACKGROUND

Mansfield at Park West, Inc. (hereinafter referred to as "Plaintiff") filed a construction defect action demanding arbitration on March 12, 2021, involving allegations of multiple deficiencies arising out of the construction of the townhomes and common elements of the townhome community known as Mansfield at Park West located in Mount Pleasant, South Carolina. The Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West, and amendments thereto, requires that disputes arising from the development, construction and sale of the townhomes be resolved through final and binding arbitration. Plaintiff filed a Motion to Compel Arbitration on March 12, 2021 (the same day the Complaint was filed). Thereafter, on May 18, 2021, D.R Horton filed a Motion to Dismiss.

ARGUMENT

It is important to note that Plaintiff has filed a Motion to Compel Arbitration which is also before this Court as the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West, and amendments thereto, requires that disputes arising from the development, construction and sale of the townhomes be resolved through final and binding arbitration. Therefore, should the Court grant Plaintiff's Motion to Compel Arbitration as to D.R. Horton, Inc., this Motion would be moot as it should be decided by the Court appointed arbitrator. To err on the side of caution, Plaintiff has included their arguments as to why said Motion should be dismissed below.

A court should deny a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, "if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory." *Baird v.*

Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) (citing *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)). In fact, the court must view the facts in the light most favorable to the plaintiff when deciding on such a motion. *Brazell v. Windsor*, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009) (citing *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). In most cases, "[t]he ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint." *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) (citing *State Board of Medical Examiners v. Fenwick Hall, Inc.*, 300 S.C. 274, 387 S.E.2d 458 (1990)).

Here, Defendant's motion states that the motion to dismiss should be granted as Plaintiff fails to state a claim upon which relief may be granted and that, the Statute of Repose bars Plaintiff's claims. D.R. Horton further states that "Plaintiff's property, which is the subject of this lawsuit, was substantially completed at the latest on September 10, 2007, as evidenced by the Charleston County public records attached hereto as 'Exhibit A,' which was more than eight (8) years prior to the filing of this Complaint on March 12, 2021. Therefore, Plaintiff's claims are, at least in part, barred by the statute of repose and Plaintiff's claims must be dismissed." There, however, was no Exhibit A attached to and/or filed with the Court.

When looking at the facts alleged by Plaintiff, in the light most favorable to Plaintiff, there is simply no way that Defendant's motion can be granted. Plaintiff has alleged in their Complaint that D.R. Horton designed, developed, constructed and/or repaired the townhome community known as Mansfield at Park West (Compl. ¶ 2); that D.R. Horton was negligent, grossly negligent, careless, reckless, willful and wanton, in developing, constructing and/or repairing the townhomes, building and common areas at issue (Compl. ¶ 10); that D.R. Horton developed, constructed and/or repaired the townhomes and buildings in violation of the applicable building codes, standard building

practices and accepted construction industry standards and practices (Compl. ¶ 10(h)); and that as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, the Plaintiff has been damaged (Compl. ¶ 11). Clearly, when looking at the facts in the light most favorable to Plaintiff, there are clear facts sufficient to constitute a cause of action against Defendant.

Furthermore, Plaintiff's Complaint alleges the following regarding the Statute of Repose:

> This project was substantially completed within the applicable time period as set forth in Section 15-3-640, Code of Laws of South Carolina, 1976, as amended, but to the extent the townhomes and buildings in this project were not substantially completed within the applicable time period, this action is not subject to the limitations set forth in Section 15-3-640, Code of Laws of South Carolina, 1976, as amended, because, *inter alia*:
>
> a. Defendant is guilty of fraud, gross negligence, or recklessness in providing components, in furnishing and manufacturing materials, in performing or furnishing the supervision, testing, or observation of construction, and/or in construction and/or development of the project, and/or
> b. The damages claimed herein were by their nature not discoverable in the exercise of reasonable diligence at the time of their occurrence; and were the result of exposure to a harmful or injury producing substance, element or particle over a period of time.

Compl. ¶ 6. Defendants seek to apply a reading of Sections 15-3-640 through 15-3-660 of the statute to benefit themselves, but completely ignore the clear reading of the exceptions to the Statute of Repose which remove the Statute of Repose as a defense as set forth in Section 15-3-670:

> A. . . . The limitations provided by Sections 15-3-640 through 15-3-660 ***are not available as a defense*** to a person guilty of fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to a person who conceals any such cause of action.

S.C. Code Ann. § 15-3-670 (emphasis added). In other words, simply raising the Statute of Repose does not automatically eliminate all causes of action other than gross negligence, fraud, or

recklessness. On the contrary, Defendants are not entitled to the Statute of Repose defense if they are guilty of fraud, gross negligence, or recklessness. Gross negligence is the failure to exercise slight care. *Etheredge v. Richland School Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275, 278 (2000). "[G]ross negligence is ordinarily a mixed question of law and fact." *Id*. "In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002). The violation of a building code may be admissible as evidence of gross negligence. S.C. Code Ann. § 15-3-670(b). Plaintiff have clearly alleged the exceptions to the Statute of Repose; therefore, their Motion to Dismiss must be denied. Furthermore, gross negligence is a question of fact for the jury (or in this case the arbitrator) to decide.

Moreover, even were Defendant to make such an argument at the hearing, Defendant's motion should not be treated as a motion for summary judgment. Ultimately, in South Carolina:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

SCRCP, Rule 12(b). Ultimately, the Supreme Court of South Carolina has interpreted this language to mean that a Rule 12(b)(6) motion may only be treated as a motion for summary judgment "*if* the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the South Carolina Rules of Civil Procedure. The notice provisions in Rule 56 are incorporated into Rule 12(b)(6)." *Brown v. Leverette, 291 S.C. 364, 367*, 353 S.E.2d 697, 699 (1987).

Here, there has been no notice to Plaintiff that such motion is meant by Defendant to be treated as a motion for summary judgment. In fact, Defendant's motion makes no mention of any outside information being provided outside of the pleadings, such as an affidavit, nor has an affidavit been filed prior to today's hearing. Therefore, Plaintiff's Amended Complaint should be the only thing that is looked upon by the Court. Thus, Defendant's motion to dismiss must be denied.

CONCLUSION

For the foregoing reasons, should the Court hear Defendant's Motion to Dismiss, Plaintiff respectfully request that this Court deny same.

THE CHAKERIS LAW FIRM

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Charleston, South Carolina
Dated: July 9, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
MANSFIELD AT PARK WEST, INC.,	)	**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL ARBITRATION AND IN SUPPORT OF D.R. HORTON, INC.'S MOTION TO DISMISS**
PLAINTIFF,	)	
vs.	)	
D.R. HORTON, INC.,	)	
DEFENDANT.	)	

I. THE MOTION TO COMPEL ARBITRATION SHOULD BE DENIED

The court should not compel arbitration because either (1) there is no valid Arbitration Agreement; or (2) Plaintiffs have not complied with the prerequisites required to force arbitration. The Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West, and amendments thereto, require that disputes arising from the development, construction and sale of the townhomes be resolved through final and binding arbitration only AFTER the parties complete a dispute resolution process. **(Exhibit A**, Declarations of Covenants, Conditions, and Restriction for Mansfield at Park West (see Article 17)).

The Covenants and Restrictions were originally adopted on September 10, 2007. They have been amended once unrelated to this case. However, three months ago, on March 1, 2021, Mansfield at Park West, Inc. and its President attempted to amend the Declarations, Covenants, and Restrictions for Mansfield at Park West, Inc. to change Article 17 Dispute Resolution. (**Exhibit B**, Second Declarations of Covenants, Conditions, and Restriction for Mansfield at Park West). That amendment was filed by the Chakeris Law Firm on March 9, 2021. This lawsuit was

filed on March 12, 2021 and Plaintiff moves to enforce the March 9, 2021 amendment. Therefore, three days prior to filing the lawsuit, Plaintiff and its attorney arbitrarily and unilaterally deleted the arbitration provision and other articles of the Covenants and are attempting to compel Defendant to abide by a new unilateral amendment which allows Plaintiff to select its own forum and venue, procedure, and rules for dispute resolution between the parties. Plaintiff seeks to enforce an arbitration provision created unilaterally three days prior to the filing of the lawsuit and this Motion to Compel Arbitration. However, the amendment does not comply with the proper amendment procedures in the original Covenants and Restrictions, nor can it be enforced against a party, in this case the builder/developer, D.R. Horton, Inc., which is neither a landowner, voting party, nor a party bound by Amended Covenants and Restrictions for Mansfield at Park West, Inc.

A. The Arbitration Provision Cannot Be Enforced Against a Party Not a Party to the Agreement.

Plaintiff cannot force a party to comply with an arbitration agreement it did not know about, agree with, sign, or negotiate. The developer/builder D.R. Horton, Inc. has not been an owner or a member of the homeowners' association since 2011 and does not have voting rights or a relationship with the association since approximately 2011. (**Exhibit C**, Real Property Info). The homeowners' association and its counsel unilaterally attempted amendment of the Covenants and Restrictions to change the agreed upon dispute resolution procedures which removes a substantial Constitutional Due Process right as well as violates the South Carolina Arbitration Act.

The South Carolina Uniform Arbitration Act § 15-48-10 states, "a written agreement to submit any existing controversy to arbitration …" The Code by its very definition requires a written agreement. In this case, the attempted second amendment is not an agreement between the parties. In fact, the attempted amendment removes the entire Article 17 and attempts to replace it with a unilateral arbitration requirement between the parties. The South Carolina Arbitration Act

does not envision, allow, or enforce a unilateral one-sided arbitration requirement. (The Federal Arbitration Act also requires that the parties agree to arbitration and cannot be enforced without an agreement between the parties). Additionally, this removes a Constitutional Due Process right without notice, comment, or the ability to object. Therefore, the Second Amendment to the Covenants cannot be enforced against D.R. Horton, Inc.

The Statute is plain that an "agreement" is necessary. While elementary, there exists no "agreement" between these parties to submit any controversy to arbitration except the 2007 agreement. The Defendant was not a member of the homeowners' association, landowner, or voting members. They were never given notice, allowed to voice an opinion, vote against, or agree or disagree to the Plaintiffs arbitration provision it is trying to enforce. The Defendant did not sign or otherwise agree to the amendment and Defendant cannot be compelled to arbitration by it. Therefore, as there is no agreement to arbitrate, except for that of 2007, the Second Amended cannot be enforced.

B. <u>The Amendment Did Not Comply With the Amendment Procedure and Fails</u>

This motion should not be granted as there is no valid arbitration provision appearing in the Covenants and Restrictions as Plaintiff failed to comply with the amendment procedure. Specifically, Article 18 of the original Covenants require that, "Unless specifically prohibited herein, the Declaration may be amended by an instrument <u>signed by members holding not less than seventy-five (75%) percent of the votes of the membership</u>. Any amendment must be properly recorded to be effective." (**Exhibit A)**. No instrument was filed with 75% of the members signing the instrument.

Further, the 2007 Covenants require a three-year amendment period. "No such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective

date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. "**Exhibit A** at Article 18.1." The Plaintiff did not record the second amendment three years in advance of its effective date and therefore it is invalid

The Covenants cannot be changed, even with seventy- five percent of the signatures prior to a three-year waiting period. In other words, the amendment could not take place for another 3 years even if it was properly done.

For those reasons, the attempted second amendment to the Declarations, Covenants and Restrictions for Mansfield at Park West, Inc. does not comply with the specific amendment procedure. Therefore, the amendment fails and the original Covenants are still in force. Those requirements have not been met. Therefore, the Motion to Enforce Arbitration should be denied and the case should be dismissed.

II. DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED

D.R. Horton Motion to Dismiss should be granted as Plaintiffs have (1) failed to comply with the dispute resolution requirements of the Covenants; and (2) are barred by the statute of Repose.

A. Plaintiffs Failed to Comply With the Dispute Resolution Requirement

The original Covenants in Article 17 require compliance with its terms including, 17.4(a) Notice and (b) Negotiation and Mediation. The Plaintiff has not complied with Article 17 or any of its prerequisites and therefore, its Complaint must be dismissed:

B. Plaintiff Have Not, and Can Not Allege or Prove Exception to the Statute of Repose

Plaintiff's property, which is the subject of this lawsuit, was substantially completed at the latest in 2011 as evidenced by the Charleston County public records attached hereto as **"Exhibit**

C" which was more than eight (8) years prior to the filing of this Complaint on March 12, 2021. Therefore, Plaintiff's claims are barred by the statute of repose and Plaintiff's claims must be dismissed.

Further, the statute of repose is clear that it should not be extended by the language of any section of that chapter. Additionally, although Plaintiff argues that it alleged fraud, gross negligence, and negligence which would prevent a Defendant from using the statute of repose, Plaintiff has only given lip service to those allegations and state no specific instances or elements supporting those allegations used specifically to overcome the statute of repose.

For instance, fraud, as a cause of action, is not plead in the Complaint. Plaintiff does not assert fraud as a cause of action and has not set forth specific elements necessary to plead a cause of action for fraud. They did; however, use the word "fraud" in attempting to overcome the statute and the statue of repose but have set forth none of the required elements of proving fraud, nor have they alleged it as a cause of action in their Complaint. Similarly, neither gross negligence nor recklessness is specifically plead, nor supported in the Complaint other than simply the use of the words to overcome the statute of repose.

Although the case is at the pleading stage, it is clear from the Plaintiff's pleadings that they are simply using key words to overcome the statute of repose and have not actually alleged any facts, circumstances, or evidence which would support the lip service given to fraud, recklessness and gross negligence. Conversely, the fact that the buildings have stood, presumably unaltered, for at least ten years, which is not a fact in dispute, would tend to discredit Plaintiff's allegations of any conduct by Defendant of fraud, gross negligence or recklessness.

Understanding that the case law and standard for a motion to dismiss is a high bar, without even the barest supporting allegation of recklessness, fraud, or gross negligence, the pleading is not sufficient to overcome the statute of repose and should be dismissed.

KENISON, DUDLEY, & CRAWFORD, LLC

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July 15, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BK P 638PG409

THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO THE SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10, et. seq., CODE OF LAWS OF SOUTH CAROLINA, 1999

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

Upon recording, please return to:

Willcox, Buyck & Williams, P.A.
1991 Glenns Bay Road
Surfside Beach, SC 29575

and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote for each class of membership applicable to a particular Unit be cast for each Unit.

4.2 Voting. The Towhnome Association shall have two (2) classes of membership, Class "I" and Class "II" as follows:

(a) Class "I". Class "I" members shall be all Owners with the exception of the Class "II" members, if any.

Class "I" members shall be entitled on all issues to one (1) vote for each Unit in which they hold the interest required for membership by Section 1 hereof; there shall be only one (1) vote per Unit. When more than one person holds such interest in any Unit, the vote for such Unit shall be exercised as those owners themselves determine and advise the Secretary of the Townhome Association prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one person seeks to exercise it.

(b) Class "II". The sole Class II Member shall be the Declarant, its successor or assign. At the time Declarant records a subdivision plat of the Townhomes in the records of Charleston County, South Carolina, for any of the real property described in Exhibit "A" or "B", or made subject to this Declaration as provided herein, Declarant shall have voting rights under this section of all Units shown on such Plat(s). As to all matters with respect to which Members are given the right to vote under the Governing Documents, the Declarant shall be entitled to ten (10) votes per Unit owned and in addition, shall be entitled to appoint all of the members of the Board until termination of the Class II Membership. The Class II Membership shall cease to exist and shall be converted to Class I Membership only upon the earlier of the following:

(1) One Hundred Twenty (120) days after the conveyance by Declarant of all of ninety (90%) percent of the Units within the real property described in Exhibit "A" or "B" or made subject to this Declaration pursuant to Section 10.1 hereof; or

(2) A date selected by Declarant as evidenced by a recorded instrument, but not later than ten (10) years after the recording of this Declaration.

ARTICLE V
Maintenance

5.1. Townhome Association's Responsibility. The Townhome Association shall maintain and keep in good repair the Common Area not conveyed to the Master Association. The Townhome Association shall also maintain and keep in good repair the exterior of the Units, including but not limited to the landscaping around the Units which shall include the back yard of a Unit unless the back yard of such Unit has been enclosed by a fence which was approved by the Townhome and/or Master Association, and such maintenance to be funded, as hereinafter provided; provided, however, any sidewalk which may be a part of the Common Area, if not dedicated to public maintenance, shall be maintained by the Townhome Association. This

maintenance shall include the following:

(a) periodic treatment of all exterior walls and foundations of the Units for termites; provided the Townhome Association shall not be liable if such treatment proves to be ineffective; and

(b) maintaining all of the landscaping and other flora around each Unit in a manner and upon terms and conditions as determined by the Townhome Association, which maintenance shall include mowing lawns, pruning shrubbery, weed control removal and replacement of dead trees and shrubs and irrigation; and,

(c) maintenance, repair, and replacement as necessary, including pressure washing, any sidewalks and driveways, including paved portions of the Units adjacent to the garage of any Unit if such driveway or paved portion is shared by two or more Units; and,

(d) maintenance, repair, and replacement as necessary of any irrigation equipment, including, but not limited to sprinklers, wells, pumps water lines and time clocks wherever located, serving the front yard of each Unit, except that the Townhome Association shall have no responsibility for any of the aforementioned which is installed or altered by any Owner or Occupant of a Unit or his or her guest, agent, employee or contractor; and,

(e) maintenance, repair, and replacement as necessary perimeter landscaping or walls within the perimeter easement are, if such perimeter walls or landscaping are initially installed by the Declarant or the Townhome Associations; and,

(f) maintenance, repair, and replacement as necessary of any and all structures and improvements situated upon the Common Area owned by the Townhome Association.

All costs and expenses related to the Townhome Association's maintenance responsibility hereunder shall be part of the General Assessment; provided however that any cost or expense incurred by the Townhome Association as a result of the negligence or misconduct of any Owner or Occupant of a Unit or his or her guest, agent, employee or contractor shall be assessed as a Specific assessment against the Owner of such Unit.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, backyards and other improvements comprising the Unit in a manner consistent with the standards of Mansfield at Park West and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. Each Owner's maintenance responsibility shall include, but shall not be necessarily limited to, the following:

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 damages due to negligence or willful acts or omissions shall apply thereto.

16.2 Sharing of Repair and Maintenance. The reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Owners who make use of the wall in proportion to such use.

16.3 Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his or her negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

16.4 Right to Contribution Runs With Land. The right of any Owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

16.5 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the owners under any rule of law regarding liability for negligent or willful acts or omissions.

16.6 Structural Integrity. No Owner, his or her tenant, guest, invitees or contractors shall by their acts or omissions impair or cause to be impaired the structural integrity of any party wall or party fences without prior written consent of all Owners having an interest therein.

ARTICLE XVII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

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

Prior to the Townhome Association or any Owner commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect at the Community or any improvement constructed upon the Property, Declarant shall have the right to meet in good faith and discuss the subject of the proceeding with the Owners, or the particular

Owner, and to access, inspect, correct the condition of, or redesign any portion of the Community, including any improvement as to which a defect is alleged. In addition, the Townhome Association, or the Owner, shall notify the builder who constructed such improvement prior to retaining any other expert witness or for other litigation purposes.

17.2 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Townhome Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Sections 17.3 ("Claims") using the procedures set forth in Section 17.4.

17.3. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Property (other than matters of aesthetic judgment under Article XI, which shall not be subject to review) shall be subject to the provisions of Section 17.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 17.4:

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

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

(c) any suit between Owners, which does not include Declarant or the Townhome Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

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

(e) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 17.4(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 17.4.

17.4. Mandatory Procedures.

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

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

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

(iii) Claimant's proposed remedy; and

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

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

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

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

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

(v) Within five (5) days of the Termination of Mediation, the Claimant shall

make a final written demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants' original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

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

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

17.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 173.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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

17.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 17.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 17.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

ARTICLE XVIII
General Provisions

18.1 Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Townhome Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until September 30, 2027, unless otherwise expressly limited herein, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Properties shall be perpetual, run with the land and shall survive any destruction, reconstruction and relocation of the physical structures, unless said provision is abrogated by the unanimous written consent of all the Unit Owners. Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership. Any amendment must by properly recorded to be effective.

18.2 Amendment by Declarant. Notwithstanding anything contained in this Declaration to the contrary, during the time the Class II Membership exists, Declarant, its successors or assigns, shall have the right to unilaterally amend any provision of this Declaration provided that such amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Unit, as determined in the sole judgment of the Declarant. Each Owner by acceptance of a deed or other conveyance to a Unit, agrees to be bound by such amendments as are permitted by this Section.

18.3 Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Townhome Association, its real and personal assets, including the Common Properties, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Townhome Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Townhome Association. No such disposition of the Townhome Association properties shall be effective to divest or diminish any right or title of any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to the Properties, unless made in accordance with the provisions of this Declaration or said covenants and deeds.

18.4 Indemnification. The Townhome Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own

individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Townhome Association (except to the extent that such officers or directors may also by members of the Townhome Association), and the Townhome Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Townhome Association shall, as a common expense, maintain adequate general liability insurance and officers' and directors' liability insurance to fund this obligation.

18.5 Compliance and Default. In the event of a violation (other than non-payment of an assessment) by an Owner, (the "Defaulting Owner") of the provisions of this Declaration and/or By-Laws as the same may be amended from time to time, the Townhome Association may notify the Defaulting Owner and its Mortgagee, if any, in writing of said violation and if such violation shall continue for a period of ten (10) days from the day notice is mailed to the last known address provided to the Townhome Association by the Defaulting Owner, the Townhome Association shall have the election to (a) fine the Defaulting Owner as the Board of Directors may fix fines for violation for the fiscal year prior to the year the violation occurs; or (b) file an action at law to recover damages on behalf of the Townhome Association and/or remaining owners; or (c) file an action to enforce performance on the part of the Defaulting Owner; or (d) file an action for such relief as may be necessary. If a Court of competent jurisdiction decides in favor of the Townhome Association, the Defaulting Owner shall reimburse the Townhome Association the attorney's fees, court costs, and expenses incurred in bringing the action. If a Court of competent jurisdiction decides in favor of the Defaulting Owner, the Townhome Association shall reimburse the Defaulting Owner the attorney's fees, court costs, and expenses incurred in defending the action

In the event the Townhome Association fails to file an action to cure a default or violation by a Defaulting Owner within thirty (30) days from the date a written request therefor is made to the Townhome Association from any other Owner, then the non-defaulting Owner is hereby authorized to bring action in the manner aforesaid on behalf of the Townhome Association and said non-defaulting Owner shall be entitled to the same remedies and obligations herein provided.

18.6 Delegation of Use. Any owner may delegate, in accordance with the By-Laws of the Townhome Association, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees.

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

18.8 Perpetuities. If any of the covenants, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendents of President George W. Bush.

18.9. Exhibits. Exhibit "A," and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Declaration. Exhibit "C" is

incorporated by this reference and may be amended in accordance with ArticleXII or this Article. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 10th day September, 2007.

D.R. Horton, Inc.

By: _____
R. Doug Brown
Division President

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON) **(S.C. CODE ANN. §30-5-30(B)(C))**

I, the undersigned, a Notary Public for South Carolina, do hereby certify that R. Doug Brown, as Division President of D.R. Horton, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument, as the act and deed of said corporation.

Witness my hand and official seal this 10th day of September, 2007.

_____ (L.S.)
Notary Public in and for S.C.

My Commission Expires: 9-16-13

BP0968950

PGS: 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West are recorded in the office of the Charleston County Register of Deeds in Book P638 Page 409; and

WHEREAS, these Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West have been previously amended and the First Amended is recorded in the office of the Charleston County Register of Deeds in Book 0032 Page 997; and

WHEREAS, in excess of Seventy-Five Percent (75%) of the members of the Association have voted to amend the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West as set forth herein; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West are amended as follows:

AMENDMENTS

1. The following language shall be added and inserted in Section 5.1 entitled "**Townhome Association's Responsibility**":

> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof. Any and all funds recovered and received by the Association after expenses of the claim shall be placed in a separate interest-bearing account and used for the sole purpose of making repairs to the townhome exteriors and exterior building components. Any such repairs made with these collected funds shall be prioritized and made at the sole discretion of the Association.

2. Article XVII entitled "**Dispute Resolution and Limitation on Litigation**" and all of its subsections to include 17.1, 17.2, 17.3, 17.4, 17.5, and 17.6 shall be deleted in its entirety and in its place shall be inserted:

ARTICLE XVII
Dispute Resolution

Any dispute between the Association and the Declarant shall be submitted to binding

arbitration with a single arbitrator agreed to by the parties or appointed by the Court. The arbitrator shall have the sole discretion to determine the rules and procedures of the arbitration and any law applicable thereto. The award of the arbitrator shall be final and binding.

To the extent that there is any provision in the Declarations that conflict with this Amendment, the terms of this Amendment shall govern. The Board of the Association shall have the right to give the final meaning and interpretation of any term of the Declaration and Amendments thereto and shall have the right to modify any provision for which it determines impedes it from fulfilling its duties and obligations to the members of the Association provided that at least two-thirds (2/3) of the Board votes in favor of such interpretation and/or modification.

IN WITNESS WHEREOF, Mansfield at Park West Inc. (the Townhome Association) by its President, has executed this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West this 1 of ~~February~~ March 2021.

MANSFIELD AT PARK WEST, INC.

Signature of 1st Witness

By: _____
Mike Frappier, Its President

Signature of 2nd Witness

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, John T Chumley (Notary Public), do hereby certify that Mansfield at Park West, Inc., by Mike Frappier, its President personally appeared before me this day and acknowledged that due execution of the foregoing instrument.

Witness my hand and seal this the 1 day of ~~February~~ March 2021.

Notary Public for South Carolina
My commission expires: 3/28/26

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

CHAKERIS LAW FIRM

231 CALHOUN ST.
CHARLESTON SC 29401

RECORDED

Date: March 9, 2021
Time: 2:38:20 PM

Book	Page	DocType
0968	950	Amend/Misc

Michael Miller, Register
Charleston County, SC

MAKER:
MANSFIELD @ PARK WEST

RECIPIENT:
NA

Original Book: P638

Original Page: 409

# of Sats:

Note:

# of Pages: 3
# of References:

Recording Fee	$ 25.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
TOTAL	$ 25.00

DRAWER Drawer 4
CLERK SLW

0968 — Book
950 — Page
03/09/2021 — Recorded Date
3 — # Pgs
P638 — Original Book
409 — Original Page
D — Doc Type
14:38:20 — Recorded Time

Property Information

Current Owner:
MANSFIELD AT PARK WEST INC
349 FOLLY RD STE 2B
CHARLESTON SC 29412-2508

Property ID	5941100164
Physical Address	PARK WEST BLVD
Property Class	990 - UNDEVELOPABLE
Plat Book/Page	/
Neighborhood	332081 WJ81 UNDEV - MORE THAN MIN VAL
Deed Acres	4.4100

Legal Description

Subdivision Name -MANSFIELD PARKWEST Description -HOA
PlatSuffix XXX-L090151 PolTwp 001

Sales History

Book	Page	Date	Grantor	Grantee	Type	Deed	Deed Price
0202	756	7/28/2011	D R HORTON INC	MANSFIELD AT PARK WEST INC	S	Ge	$10
Z572	427	2/14/2006	PARKWEST DEVELOPMENT INC	D R HORTON INC		Ge	$1,960,000
F484	235	2/12/2004	NOT SUPPLIED	PARKWEST DEVELOPMENT INC		Ge	$5,247,765
XXX	L090151	1/1/1900		NOT SUPPLIED		Ma	$0

RETURN SALES TAX INFO ADDITIONAL PROPERTY INFO PRINT

KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW

Jason M. Imhoff
Of Counsel
Licensed in SC
704 East McBee Avenue
Greenville, SC 29601
864.242.4899
imhoff@conlaw.com

May 28, 2021

Via Electronic Mail – john@chakerislawfirm.com
John Chakeris, Esquire
The Chakeris Law Firm
234 Seven Farms Drive, Ste. 128
Charleston, SC 29492

Re: Mansfield at Park West, Inc. v. D.R. Horton, Inc.
Charleston County Case No. 2021-CP-10-01215

Dear Johnny:

We write to draw your attention to Sections 17.1 - 17.6 of the Declaration of Covenants, Conditions and Restrictions for Mansfield Park West ("Covenants"). As you are aware, those Covenants require a meeting in good faith after D.R. Horton is allowed to access, inspect, correct the condition of, or redesign any portion of the Community. In addition, the Townhome Association, or the Owner, shall notify the builder who constructed such improvement prior to retaining any other expert witness or for other litigation purposes. Specifically, Section 17.4 requires:

17.4. Mandatory Procedures.

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

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

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

(iii) Claimant's proposed remedy; and

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

Thereafter, the Covenants require a mediation among other terms.

It is our position, which we do not waive, that Plaintiff has failed to comply with the terms, conditions, and mandatory requirements of the Covenants and has therefore waived its entire claim by filing the lawsuit. We intend to make this argument to the Court in our motion to dismiss.

However, in an attempt to comply with the good faith provisions of the Covenants, without waiving our right to move for dismissal, we ask that Plaintiff comply with the provisions of the Covenants, especially Section 17.4 above. We suggest setting a mediation 60 days from tomorrow (end of July) which will give us an opportunity to invite our subcontractors.

We are happy to discuss this in further detail but would like to hear from you in the next 10 days.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC

Jason M. Imhoff

Jason M. Imhoff

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON MANSFIELD AT PARK WEST, INC., Plaintiff, vs. D.R. HORTON, INC., Defendant. D.R. HORTON, INC., Third-Party Plaintiff, vs. 84 LUMBER, LP; AMERICO ROOFING CONCEPTS, INC.; BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC; DVS, INC.; MANER BUILDERS SUPPLY CO., INC.; AND STIER SUPPLY CO., INC., Third-Party Defendants,	IN THE COURT OF COMMON PLEAS IN THE TENTH JUDICIAL CIRCUIT 2021-CP-10-01215 **SUMMONS TO THIRD-PARTY COMPLAINT**

TO: NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint contained in the Amended Answer of D.R. Horton, Inc., to Plaintiff's Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Third-Party Complaint on the subscriber hereto at this office at 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff
John T. Crawford Jr. (SC Bar # 69682)
Jason Imhoff (S.C. Bar # 69355)
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
(864) 242-4844 (fax)
Crawford@conlaw.com
Imhoff@conlaw.com
Attorneys for Defendant D.R. Horton, Inc.

June 10, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON MANSFIELD AT PARK WEST, INC., Plaintiff, vs. D.R. HORTON, INC., Defendant. D.R. HORTON, INC., Third-Party Plaintiff, vs. 84 LUMBER, LP; AMERICO ROOFING CONCEPTS, INC.; BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC; DVS, INC.; MANER BUILDERS SUPPLY CO., INC.; AND STIER SUPPLY CO., INC., Third-Party Defendants,	IN THE COURT OF COMMON PLEAS IN THE TENTH JUDICIAL CIRCUIT 2021-CP-10-01215 **DEFENDANT D.R. HORTON, INC.'S AMENDED ANSWER AND THIRD-PARTY COMPLAINT**

TO: ALICIA D. PULLANO, ESQUIRE, AND JOHN T. CHAKERIS, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Pursuant to Rule 15, SCRCP, Defendant D.R. Horton, Inc. (hereinafter "Defendant" or "D.R. Horton"), hereby amends its answer and asserts a third-party complaint and answers the Complaint of Plaintiff, Mansfield at Park West ("Plaintiff"), as set forth below by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further respond as follows:

FOR A FIRST DEFENSE

1. Paragraph 1 of Plaintiff's Complaint calls for a legal conclusion which can neither be admitted or denied. To the extent a response is required to this Paragraph, it is denied, and strict proof is demanded therein.

2. Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. Paragraphs 3 and 4 of Plaintiff's Complaint call for legal conclusions which can neither be admitted or denied. To the extent a response is required to these Paragraphs, it is denied, and strict proof is demanded therein.

4. Defendant is without knowledge and information sufficient to respond to the allegations of Paragraph 5 of Plaintiff's Complaint and therefore denies the same.

5. Paragraph 6 of Plaintiff's Complaint (including all subparts) calls for a legal conclusion which can neither be admitted or denied. To the extent a response is required to this Paragraph, it is denied, and strict proof is demanded therein.

6. Defendant denies the allegations of Paragraph 7 of Plaintiff's Complaint.

7. Paragraph 8 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of Plaintiff's Complaint.

8. Paragraph 9 of Plaintiff's Complaint calls for a legal conclusion which can neither be admitted or denied. To the extent a response is required to this Paragraph, it is denied, and strict proof is demanded therein.

9. Defendant denies the allegations of Paragraphs 10 (including all subparts) and 11 of Plaintiff's Complaint.

10. Paragraph 12 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of Plaintiff's Complaint.

11. Paragraph 13 of Plaintiff's Complaint calls for a legal conclusion which can neither be admitted or denied. To the extent a response is required to this Paragraph, it is denied, and strict proof is demanded therein.

12. Defendant denies the allegations of Paragraphs 14 and 15 of Plaintiff's Complaint.

13. Paragraph 16 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of Plaintiff's Complaint.

14. Paragraphs 17, 18 and 19 of Plaintiff's Complaint call for legal conclusions which can neither be admitted or denied. To the extent a response is required to these Paragraphs, it is denied, and strict proof is demanded therein.

15. Defendant denies the allegations of Paragraphs 20, 21, 22, and 23 of Plaintiff's Complaint.

16. Paragraph 24 of Plaintiff's Complaint is an administrative paragraph to which no response is required. To the extent a response is required, Defendant realleges and reasserts its answers and defenses to the prior allegations of Plaintiff's Complaint.

17. Paragraphs 25 and 26 of Plaintiff's Complaint call for legal conclusions which can neither be admitted or denied. To the extent a response is required to these Paragraphs, it is denied, and strict proof is demanded therein.

18. Paragraph 26 of Plaintiff's Complaint calls for a legal conclusion which can neither be admitted or denied. To the extent a response is required to this Paragraph, it is denied, and strict proof is demanded therein.

19. Defendant denies the allegations of Paragraph 27, 28, 29 (including all subparts), 30 and 31 of Plaintiff's Complaint.

20. Defendant denies all remaining allegations of Plaintiff's Complaint, including the Paragraph beginning "WHEREFORE" which claims entitlement to damages and other relief and prays that this action against D.R. Horton be dismissed.

FOR A SECOND DEFENSE
(Arbitration)

21. Defendant moves to dismiss this action pursuant to Rule 12(b)(6) SCRCP, or alternatively, stay this action as the Contract entered into by the parties contains a binding and enforceable arbitration agreement. Therefore, this Court does not have jurisdiction to hear this matter. Thus, Defendant alleges that this action should be stayed pending arbitration agreements made with Defendant regarding this matter.

FOR A THIRD DEFENSE
(Lack of Standing)

22. Plaintiff lacks standing to make the claims asserted against Defendant in this action.

FOR A FOURTH DEFENSE
(Failure to State a Claim or Cause of Action)

23. Plaintiff fails to state a claim upon which relief may be granted.

24. Plaintiff fails to state a cause of action against Defendant.

FOR A FIFTH DEFENSE
(Laches, Estoppel, Waiver)

25. That all claims asserted against Defendant are barred by the equitable doctrines of laches, waiver, and/or estoppel.

FOR A SIXTH DEFENSE
(Spoliation)

26. Plaintiff's claims are barred by the doctrine of spoliation of evidence.

FOR A SEVENTH DEFENSE
(Unclean Hands)

27. Plaintiff's claims against Defendant are barred by the Doctrine of Unclean Hands.

FOR AN EIGHTH DEFENSE
(Negligence of Others)

28. Defendant alleges that the direct and proximate cause of Plaintiff's damages, if any, were the negligence, gross negligence, wanton and reckless conduct of some other person or corporation, and accordingly, Defendant is not liable to Plaintiff.

FOR A NINTH DEFENSE
(Contributory/Comparative Negligence)

29. Plaintiff's claims and damages, if any, are barred or should be reduced by Plaintiff's own contributory negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of Defendant, if any, and which is expressly denied.

FOR A TENTH DEFENSE
(Offset)

30. Defendant is entitled to offset in the amount of any and all damages recovered by the Plaintiff from others for the same injuries and/or damages claimed in this suit.

FOR AN ELEVENTH DEFENSE
(Statute of Limitations and Repose)

31. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or statute of repose.

FOR A TWELFTH DEFENSE
(Mitigate Damages)

32. Defendant alleges that Plaintiff had an obligation to mitigate damages but failed to do so.

FOR A THIRTEENTH DEFENSE
(Compliance with Industry Standards)

33. Any and all materials, work or services provided by Defendant met all relevant industry customs, practices and standards.

FOR A FOURTEENTH DEFENSE
(Acceptance of Work)

34. That the final completion and acceptance of the work undertaken by Defendant constituted a defense to all claims asserted by Plaintiff.

FOR A FIFTEENTH DEFENSE
(Proximate Cause)

35. Even if Defendant was negligent or in breach, Defendant alleges that Plaintiff's claims are barred due to the lack of proximate cause between Plaintiff's alleged damages and the alleged actions/inactions of Defendant.

FOR A SIXTEENTH DEFENSE
(Scope of Work)

36. Defendant's obligations to Plaintiff are limited to the services provided pursuant to Defendant's scope of work; therefore, to the extent that any of Plaintiff's claims include allegations

against Defendant that are outside the scope of services and work performed by Defendant, those claims are barred.

FOR A SEVENTEENTH DEFENSE
(Limitation of Warranty)

37. Plaintiff's claims are, upon information and belief, barred as Plaintiff failed to make a claim against Defendant within the applicable warranty period and would be reduced to the extent that Defendant provided a limited warranty which was in lieu of all other warranties.

FOR AN EIGHTEENTH DEFENSE
(Intervening/ Superseding Cause)

38. Defendant asserts that even if it was negligent or reckless in any respect, which is expressly denied, it is not liable to Plaintiff for resulting damages, if any, because of the intervening negligent, grossly negligent, reckless, willful, and wanton acts of third parties, including those parties whose identities are unknown at the present time, which negligent and reckless acts on their part were not reasonably foreseeable, and intervened and acted as the direct and proximate cause of the damages, if any, sustained by Plaintiff.

39. Defendant asserts that the intervening acts of a third party or parties were the sole and proximate cause of injuries to Plaintiff and the action should be dismissed.

40. Defendant asserts that, even if it was negligent, any negligent acts were the result of negligent supervision by third parties, including those named in this action and unknown at this time.

FOR A NINETEENTH DEFENSE
(Legal Duty)

41. Defendant owed no legal duty as a matter of law to the Plaintiff.

FOR A TWENTIETH DEFENSE
(Punitive Damages)

42. Defendant would show that if the Plaintiff is making any claim for punitive damages, such violates the due process and equal protection laws of the United States Constitution and the Constitution of South Carolina.

43. Punitive Damages are inappropriate in this case, as a matter of law and also because the Defendant did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages would be based.

44. Defendant would show that any award of punitive damages is subject to the limitations set forth in S.C. Code § 15-32-530.

FOR A TWENTY-FIRST DEFENSE
(Workmanlike Manner)

45. Defendant asserts that all work performed was done in workmanlike manner and, therefore, no breach of warranty may exist.

FOR A TWENTY-SECOND DEFENSE
(Condition Precedent)

46. To the extent Plaintiff alleges Defendant has any obligation as to which full performance has not been rendered or excused, Plaintiff failed to satisfy all conditions precedent to said obligations or duties occurred and, therefore, Plaintiff's claims are barred.

FOR A TWENTY-THIRD DEFENSE
(Additional Affirmative Defenses)

47. Defendant hereby gives notice that it intends to rely on such other affirmative defense pled by other third-party defendants in this matter and as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert such defenses.

FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND BY WAY OF THIRD-PARTY COMPLAINT AGAINST 84 LUMBER, LP, AMERICO ROOFING CONCEPTS, INC., BUILDERS FIRSTSOURSE – SOUTHEAST GROUP, LLC, DVS, INC., MANER BUILDERS SUPPLY CO., LLC AND STIER SUPPLY CO., INC.

48. Defendant repeats and re-alleges the foregoing paragraphs consistent with this cause of action as if fully stated verbatim herein.

49. Defendant individually contracted with 84 Lumber, LP; Americo Roofing Concepts, Inc.; Builders FirstSource – Southeast Group, LLC; DVS, Inc.; Maner Builders Supply Co., LLC; and Stier Supply Co., Inc. (collectively referred to as "Subcontractors") to provide certain labor and/or supply certain materials (collectively and individually the "Work") concerning the homes located in Mansfield at Park West in Charleston, South Carolina (the "Homes").

50. Subcontractors' individual and respective contracts with Defendant, as referred to directly above, shall be collectively referred to as the "Agreements."

51. The Homes are the subject of Plaintiff's lawsuit.

52. Pursuant to the Agreements, the Subcontractors agreed to perform their work on the Homes "in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrant[ed] that the Work will meet or exceed … all laws (statutory or common) and regulations, and any applicable building code requirements."

53. Subcontractors were aware of the need and the importance of constructing the Homes in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

54. Plaintiff has filed a Complaint against Defendant seeking damages related to the construction and workmanship of the Homes, alleging that the Homes has been constructed defectively.

55. Upon information and belief, Plaintiff's Complaint implicates each respective Subcontractors' Work.

56. Plaintiff's allegations contend that the Work provided by Subcontractors was grossly negligent, such that if proven to be true, Subcontractors have failed to meet the requirements of the Agreements, including failing to construct the Homes and provide materials in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

57. The Subcontractors' Agreements contained an indemnification clause, wherein the Subcontractors agreed to indemnify Defendant for claims, demands, and lawsuits arising out of, resulting from, or related in any way to the Work provided by Subcontractors.

58. Defendant has fully satisfied and performed all requirements associated with each respective Agreement.

59. Although Defendant is without fault, by virtue of the alleged acts and omissions of the Subcontractors, Defendant has been subjected to suit and to the costs, expenses, attorneys' fees, and other damages set forth more fully below.

FOR A FIRST CAUSE OF ACTION
(Contractual Indemnification as to Subcontractors)

60. Defendant repeats and re-alleges the foregoing paragraphs consistent with this cause of action as if fully stated verbatim herein.

61. Plaintiff has sued Defendant claiming damages related to the Work alleged to have been performed by Subcontractors.

62. Subcontractors contracted with Defendant to perform certain construction services and/or furnish certain materials for the Homes. Subcontractors' Work on the project for Defendant gave rise to contractual and common law duties in tort and/or warranty.

63. Plaintiff has alleged that these certain deficiencies in the Work of Subcontractors have caused damages.

64. Defendant is informed and believes that if, in fact, Plaintiff is entitled to recover under the allegations of the Complaint, that the allegations are the result of the wrongful acts omissions, negligence, gross negligence, and/or representations of the Subcontractors, all of which are contrary to the agreements and statutory and common laws of the State of South Carolina.

65. To the extent, if any, that Defendant is held liable to Plaintiff in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, negligence and/or gross negligence of the Subcontractors, which have damaged Defendant as it has been subjected to liability and has incurred consequential damages in incurring the attorneys' fees and costs necessary to defend this action.

66. Pursuant to the Agreement with Defendant, the Subcontractors agreed to insure, defend, and indemnify Defendant from damages arising out of the Subcontractors' Work on the Homes.

67. Defendant is entitled to a judgment for full contractual indemnification from any liability Defendant is found to have to Plaintiff in this action, and Defendant would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of the Subcontractors that Defendant, as described hereinabove, entitling Defendant to recover from Subcontractors its attorneys' fees, costs, and any and all other expenses associated with defending this action as well as any sums for which it may be held liable to Plaintiff, whether by judgment, compromise, settlement, or otherwise.

68. If Subcontractors' work was defective, Subcontractors breached their contractual and common law duties to Defendant and caused it damages at the time they performed their work.

Subcontractors' allegedly deficient work gave rise to causes of action in favor of Defendant against Subcontractors at the time the work was performed and caused Defendant damages, which would not become apparent for years. Those damages include extra workload, repair or repair costs of the defective work, previously unknown breaches of Defendant's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, damage and harm to reputation, and potentially attorneys' fees and litigation costs incurred due to subcontractors' defective, latent, and previously unknown errors.

69. The alleged acts or omissions of Subcontractors are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, and any wrongful acts or omissions by Defendant, which are expressly denied, were passive and secondary only.

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnification as to Subcontractors)

70. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

71. Plaintiff has sued Defendant claiming damages related to the Homes and such claims include allegations based upon the Work performed by Subcontractors.

72. Defendant has denied all substantive allegations against it that were made by Plaintiff.

73. A sufficient special relationship exists between Defendant and Subcontractors.

74. Defendant is informed and believes that if, in fact, Plaintiff is correct in its allegations that construction defects or product defects exist, those defects existed at the time of Subcontractors' work and D.R. Horton was and its entitled to recover against Subcontractors for the cost of that defective work if the result of the wrongful acts, omissions, negligence, gross

negligence, and/or representations of Subcontractors, all of which are contrary to the statutory and common laws of the State of South Carolina.

75. To the extent, if any, that Subcontractor's work or products were defective or that Defendant is held liable to Plaintiff in this action, damages and/or liability would be the direct and proximate result of the alleged wrongful acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors, which have damaged Defendant as it has an alleged obligation to repair or pay for a repair of the defective conditions or has been subjected to liability and has incurred consequential damages in incurring the attorneys' fees and costs necessary to defend this action.

76. To the extent, if any, that Defendant is held liable to Plaintiff in this action, the alleged acts or omissions of Subcontractors are the independent, active, primary, superseding, and/or intervening causes of damages allegedly suffered by Plaintiff, and any wrongful acts or omissions by Defendant, which are expressly denied, were passive and secondary only.

77. Defendant is entitled to a judgment for full common law indemnification from Subcontractors for any liability Defendant is found to have to Plaintiff in this action, and Defendant would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of Subcontractors as afore described, entitling Defendant to recover from Subcontractors including, but not limited to, its attorneys' fees, costs, any and all other expenses associated with defending this action as well as any sums for which it may be held liable to Plaintiff, whether by judgment, compromise, settlement, or otherwise, extra workload, repair or repair costs of the defective work, previously unknown breaches of Defendant's common law duties, express and implied warranties, and contractual relationships with other parties, costs of investigation, and damage and harm to reputation.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Subcontractors)

78. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

79. Subcontractors were contractually responsible for performing the requirements in the Agreements correctly.

80. To the extent that Plaintiff proves that the Work was not performed correctly, Subcontractors materially breached the Agreements in failing to construct the Homes in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

81. Defendant is entitled to judgment against Subcontractors for breach of contract plus costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FOURTH CAUSE OF ACTION
(Breach of Express Warranties as to Subcontractors)

82. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

83. Subcontractors made express warranties that any materials, installation, and workmanship they performed at the Homes were proper as required by the Agreements, applicable building codes, and industry standards.

84. If the materials, installation, and/or workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements, then Subcontractors have materially breached their express warranties.

85. As a direct, foreseeable and proximate result of Subcontractors' breach of express warranties, Defendant has been damaged in that it was deprived of the benefit of the bargain, has

and will suffer substantial damages in defending this action by Plaintiff, and has suffered damaged to its professional reputation among other damages herein.

86. Defendant is entitled to judgment against Subcontractors for breach of express warranties, along with costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranties as to Subcontractors)

87. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

88. Subcontractors made implied warranties, specifically, warranties of workmanlike service, habitability, merchantability and fitness for a particular purpose.

89. If materials, installation, workmanship, and/or work requirements were not in accordance with contract requirements, industry standards, and/or building code requirements, then Subcontractors have materially breached the implied warranties of workmanlike service, habitability, merchantability and fitness for a particular purpose by failing to provide the proper results required under the Agreements.

90. Subcontractors were aware that Defendant's intention was to build the Homes in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects.

91. Subcontractors were aware that Defendant was relying on their expectations under Subcontractors' Agreements to be met.

92. Since the Agreements contained requirements to build the Homes in accordance with contract requirements, industry standards, and/or building code requirements so as to avoid construction defects, Defendant relied on Subcontractors to meet these requirements.

93. As a direct, foreseeable and proximate result of Subcontractors' breach of implied warranties, Defendant has been damaged in that it was deprived of the benefit of the bargain, has and will suffer substantial damages in defending this action by Plaintiff, damages in the amount necessary to repair any construction deficiencies, and has suffered damaged to its professional reputation among other damages herein.

94. Defendant is entitled to judgment against Subcontractors for breach of the implied warranties of workmanlike service, habitability, merchantability and fitness for a particular purpose, along with costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A SIXTH CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness as to Subcontractors)

95. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

96. Upon information and belief, Subcontractors owed a duty to use due care in ensuring that proper levels of workmanship were achieved, and materials provided under the terms of the Agreements.

97. If due care was not used in ensuring proper levels of workmanship were achieved and materials provided, then Subcontractors breached that duty of care by failing to ensure that proper levels of workmanship were achieved, and materials provided pursuant to the requirements under the Agreements.

98. Defendant have been damaged as a direct and foreseeable and proximate result of Subcontractors' negligence/gross negligence/recklessness, in that, among other damages, Defendant was deprived of the benefit of the bargain, has and will suffer substantial damages in defending this action by Plaintiffs, and has suffered damages to its professional reputation, and

Defendant is entitled to judgment against Subcontractors for its damages, including costs, expense, attorneys' fees, and other damages associated therewith and set forth herein.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant D.R. Horton, Inc. prays for:

(a) Dismissal of Plaintiff's Complaint and all causes of action contained therein, with prejudice, and an award to Defendant of its attorneys' fees, costs, and other expenses incurred in defending this action;

(b) On Defendant's First and Second Cause of Action, judgment in favor of Defendant and against Subcontractors in the amount of any liability Defendant is found to have to the Plaintiff in this action and requiring Subcontractors to defend and indemnify Defendant against any liability which Defendant may be liable for and for any costs, losses, or damages Defendant may incur as it relates to the Plaintiff in this action, to include Defendant's attorneys' fees, costs, and any and all other expenses incurred in defending this action;

(c) On Defendant's Third, Fourth, and Fifth Causes of Action, judgment for Defendant and against Subcontractors in an amount to be determined at trial;

(d) On Defendant's Sixth Cause of Action, judgment for Defendant and against Subcontractors awarding actual, special, consequential and punitive damages in an amount to be determined at trial;

(e) Attorneys' fees;

(f) Costs of this action; and

(g) Such other and further relief that this Court deems just and proper.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff
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Jason Imhoff (S.C. Bar # 69355)
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Attorneys for Defendant D.R. Horton, Inc.

June 10, 2022
Greenville, South Carolina

EXHIBIT F

STATE OF SOUTH CAROLINA	)	IN THE ARBITRATION OF
	)	
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
	)	
MANSFIELD AT PARK WEST, INC.,	)	
	)	**DEFENDANT D.R. HORTON INC.'S**
	)	**NOTICE OF MOTION AND MOTION**
PLAINTIFF,	)	**FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
D.R. HORTON, INC.,	)	
	)	
DEFENDANT.	)	
	)	

TO: PLAINTIFF MANSFIELD AT PARK WEST, INC. AND ITS COUNSEL OF RECORD JOHN T. CHAKERIS, ESQUIRE, ALICIA D. PULLANO, ESQUIRE, AND W. JEFFERSON LEATH, JR., ESQUIRE:

PLEASE TAKE NOTICE THAT ten (10) days after the service of this Notice upon you, or as soon thereafter as counsel may be heard, the undersigned attorney for Defendant D.R. Horton, Inc. (hereinafter "D.R. Horton"), will move for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP") granting summary judgment as to Plaintiff's claims for negligence and gross negligence, breach of implied and express warranties, unfair trade practices, and breach of fiduciary duty.

1. <u>Real Party In Interest</u>

Plaintiff Mansfield at Park West, Inc., is not the Real Party in Interest, nor does it have the right to bring the claims on behalf of the individual homeowners. Pursuant to The Covenants and Restrictions, the individual homeowners have the right and obligation to maintain and repair the units. On, March 1, 2021, immediately before filling the present lawsuit, the Homeowners attempted to amend the Covenants and Restrictions to remove sections and assign the right to bring this lawsuit to Plaintiff. That amendment is ineffective and contrary to the terms and conditions of

the Covenants and Restrictions and the lawsuit should be dismissed.

2. Statute of Repose

This case involves allege defects in the construction of a townhome community known as Mansfield at Park West ("Mansfield"). Plaintiff filed suit against D.R. Horton on March 12, 2021. The statute of repose for alleged defective improvements to real property is 8 years after "substantial completion of the improvement." S.C. Code § 15-3-640. Pursuant to Section 15-3-640, "a certificate of occupancy … in the case of new construction … shall constitute proof of substantial completion[.]" As noted by the Supreme Court of South Carolina in Lawrence v. General Panel Corp., "the statute of repose begins to run *at the latest* on the date of the certificate of occupancy[.]" 425 S.C. 398, 822 S.E.2d 800 (2019) (emphasis added). Thus, Plaintiff's claims relating to the townhomes that were issued a certificate of occupancy prior to March 12, 2013, are time-barred. Certificates of Occupancy were issued for the townhomes between 2009 and 2012.

Moreover, the exceptions to the statue of repose defense contained in S.C. Code § 15-3-670 are inapplicable to these townhomes. Pursuant to S.C. Code § 15-3-670(A), the statute of repose is not applicable to a defense to claims of "fraud, gross negligence, or recklessness." There is no evidence to support Plaintiff's claim for gross negligence and recklessness. Further, the concealment exception is inapplicable as there is no evidence D.R. Horton concealed a cause of action from Plaintiff. *See* S.C. Ann. § 15-3-670(A) ("The limitations provided by 15-3-640 through 15-3-660 are not available as a defense … to a person who conceals any such cause of action"). *See also* Pier View Condominium Ass'n, Inc. v. Johns Manville, Inc., 2022 WL 632933 (D.S.C. March 4, 2022) (concealment exception to statute of repose requires affirmative acts to mislead or hide information that a cause of action may exist as opposed to the simple nondisclosure of defects). Lastly, no toxic, harmful, or injury-producing substance, element or particle allegedly

resulting in property damage necessary to establish an exception under S.C. Code Ann. § 15-3-670(C) has been identified.

Based on the foregoing, the 8-year statute of repose bars all of Plaintiff's claims, and D.R. Horton is entitled to summary judgment.

3. Breach of Warranty of Habitability

Plaintiff also cannot maintain an action against D.R. Horton for breach of warranty of habitability as Plaintiff did not purchase any of the townhomes. The warranty of habitability arises from the sale of the home. *See* Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E2d 730 (1989). *See also* Lane v. Trenholm Bldg. Co., 267 S.C. 497, 229 S.E.2d 728 (1976) and Avari v. Shaw, 289 S.C. 161, 34 S.E.2d 715 (1986). Because Plaintiff did not purchase the townhomes, Plaintiff's claim for breach of warranty of habitability fails, and D.R. Horton is entitled to judgment as a matter of law.

4. Acceptance of Defects by New Owners

For any townhomes that have been sold since there was knowledge of the alleged defects, those claims would be barred against D.R. Horton.

5. Unfair Trade Practices Act

Plaintiff cannot make a *prima facie* case for the violation of the Unfair Trade Practices Act ("UTPA"). The UTPA declares that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commence are … unlawful." S.C. Code Ann. § 39-5-20(a) (1985). In order "[t]o recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." RFT Mgmt. Co., L.L.C. v. Tinsley &

Adams L.L.P., 399 S.C. 322, 337, 732 S.E.2d 166, 174 (2012) (quoting Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)).

6. Breach of Fiduciary Duty

Plaintiff cannot make a *prima facie* case for breach of fiduciary duty and, therefore, D.R. Horton is entitled to summary judgment on the clam. To establish a claim for bready of fiduciary duty under South Carolina law, "the plaintiff must prove (1) *the existence of a fiduciary duty*, (2) a breach of the duty *owed to plaintiff by the defendant*, and (3) damages proximately resulting from the wrongful conduct of the defendant." RTF Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-336, 732 S.E.2d 166, 173 (2012) (emphasis added). Plaintiff alleges that D.R. Horton owed "fiduciary and fiduciary-like duties" as a developer and seller. (Complaint, ¶ 25). However, there is no evidence to support a finding of a fiduciary duty, much less a breach of that duty. Therefore, D.R. Horton is entitled to judgment as a matter of law on Plaintiff's breach of fiduciary duty claim.

CONCLUSION

Pursuant to South Carolina Rule of Civil Procedure Rule 10(c), D.R. Horton incorporates by reference its arguments submitted in its Brief in Support of its Motion to Dismiss and in Opposition to Plaintiff's Motion to Compel Arbitration electronically filed on July 15, 2021.This Motion shall be further based upon the statutory and common laws of the State of South Carolina, the SCRCP, the pleadings heretofore filed, and any and all affidavits, memorandums and supporting material which may be served on or before the date of the hearing for this motion.

The undersigned affirms pursuant to Rule 11 of the SCRCP that consultation with opposing counsel is not required prior to the filing of this Motion.

WHEREFORE, Defendant D.R. Horton, Inc. shall, and hereby does, move the Arbitrator

for an Order granting summary judgment in favor of D.R. Horton as to all of Plaintiff's claims upon the grounds that the claims are barred by the statute of repose. D.R. Horton further moves the Arbitrator for an Order granting summary judgment on the grounds that there exists no genuine issue as to any material fact and that D.R. Horton is entitled to judgment as a matter of law in favor.

KENISON, DUDLEY, & CRAWFORD, LLC

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Counsel for Defendant D.R. Horton Inc.

August 10, 2022

STATE OF SOUTH CAROLINA	)	IN THE ARBITRATION OF
	)	
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
	)	
MANSFIELD AT PARK WEST, INC.,	)	
	)	**DEFENDANT D.R. HORTON INC.'S**
	)	**MEMORANDUM IN SUPPORT OF ITS**
PLAINTIFF,	)	**MOTION FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
D.R. HORTON, INC.,	)	
	)	
DEFENDANT.	)	
	)	

Defendant D.R. Horton, Inc. ("D.R. Horton") hereby submits this Memorandum in Support of its Motion for Summary Judgment showing as follows:

I. STATEMENT OF FACTS

Plaintiff is the homeowners' association for a townhome community known as Mansfield at Park West located in Charleston County, South Carolina ("Mansfield"). Mansfield consists of six buildings and twenty-six units. (R. Mease Depo., 26:18-27:14, 52:19-53:17). During construction, permits and certificates of occupancy were issued for each individual unit. (R. Mease Depo., 28:5-15). The certificates of occupancy for the townhomes were issued between 2009 and 2011. (R. Mease Depo., 56:3-8, Exhibit 3).[1]

Plaintiff alleges various defects and deficiencies relative to the development, construction and/or repair of the townhome units at Mansfield. (*See generally*, Plaintiff's Complaint).[2]

[1] A copy of the spreadsheet compiled by Plaintiff's Expert, Russel Mease, outlining the dates that the permits and the certificates of occupancy were issued for each townhome is attached hereto as Exhibit A. Copies of the certificates of occupancy (the "Certificates of Occupancy") for each townhome are attached hereto as Exhibit B.

[2] Plaintiff's Complaint also alleges that there were issues with the common areas in Mansfield, but Plaintiff's expert did not evaluate the clubhouse. (R. Mease Depo., 54:11-19).

Specifically, Plaintiff's expert, Russell Mease, has opined that there are construction deficiencies with the roofing, the siding, the fences and the windows. (R. Mease Depo., 43:8-14). Mr. Mease concedes that many of these issues are "common" and "typical" in construction.

- With regard to overdriven fasteners, Mr. Mease testified that "this is a common problem." (R. Mease Depo., 73:11-17).
- Overdriven and angle driven nails are common defect that Mr. Mease has seen over the course of his thirty-year career with installation of shingles. (R. Mease Depo., 107:16-109:1). In fact, 85 to 90 percent of the time, he sees overdriven and angle driven nails. (Id.)
- Having the fasteners and plank siding too far apart or not in the framing is "one of the typical conditions [he] finds in a defective installation." (R. Mease Depo., 114:24-115:7).
- Concerning water getting into a building because of an alleged defect with the installation of the windows, Mr. Mease "see[s] this condition all the time. It is a very common thing that [he] runs across." Additionally, Mr. Mease has "stacks and stacks of photographs that show [this] damage[.]" (R. Mease Depo., 131:1-3).

Mr. Mease could only point to one defect as being what he referred to as a "gross dereliction of duty" – the selection of one of the siding materials. (R. Mease Depo., 39:21-40:5). One of the siding materials was unlabeled, and Mr. Mease believes that it is a product that does not belong in the wind zone. (R. Mease Depo., 39:21-40:5, 57:21-59:18, 165:6-23). However, Mr. Mease cannot prove that the unlabeled siding is that product. (Id.). Mr. Mease also testified that he does not know who selected the siding and whether D.R. Horton took any part in that decision. (*Id.*).

Plaintiff contends that it has standing to bring this action, instead of the individual homeowners, by virtue of an amendment to the Declaration of Covenants, Conditions and Restrictions ("CCRs") filed a mere three days before this action was filed. Pursuant to the original CCRs, the individual homeowners have the right and obligation to maintain and repair the units. (A copy of the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West is attached hereto as Exhibit C). The original CCRs provide that:

> Each Owner shall maintain his or her Unit and all structures, parking areas, backyards and other improvements comprising the Unit in a manner consistent with the standards of Mansfield at Park West and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association[.] ... Each Owner's maintenance responsibility shall include, but shall not be necessarily limited to, the following:
>
> ...
>
> (b) maintenance, repair, and replacement as necessary of the exterior surfaces of the Units ... and,
>
> (e) maintenance, repair and replacement as necessary of the roof including shingle and roof decking of the Unit.

Exhibit C, CCRs, § 5.2.

On March 1, 2021, the homeowners attempted to amend the CCRs and assign the right to bring this lawsuit to Plaintiff. (A copy of the Second Amendment to Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West is attached hereto as Exhibit D) (the "Second Amendment"). Specifically, the Second Amendment attempted to modify the original CCRs, in pertinent part, by adding the following language:

> **"Townhome Association's Responsibility"**:
>
> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof[.]

Exhibit D. The Second Amendment was filed by counsel for Plaintiff on March 9, 2021. This case was filed three days later on March 12, 2021.

Plaintiff brings the following causes of action against D.R. Horton: (1) negligence, gross negligence, carelessness, recklessness, willfulness and wantonness; (2) breach of warranty of habitability, breach of warranty against latent defects, breach of warranty for workmanlike services, breach of warranty for fitness for a particular purpose, breach of warranty of merchantability and serviceability, and breach of express warranty; (3) unfair trade practices; and (4) breach of fiduciary duty. As outlined in the Complaint, Plaintiff contends that the claims are not barred by the eight-year statute of repose set forth in S.C. Code § 15-4-640 (the "Statute of Repose") because the townhomes were substantially completed within that time period. In the alternative, Plaintiff contends that this action is not subject to the Statute of Repose because: (1) D.R. Horton is guilty of fraud, gross negligence or recklessness; and/or (2) the damages claimed were by their nature not discoverable in the exercise of reasonable diligence at the time of their occurrence and were the result of exposure to a harmful or injury producing substance, element or particle over a period of time. (Plaintiff's Complaint, ¶ 6).

The Complaint was filed on March 12, 2021. Therefore, absent an applicable exception, Plaintiff's claims relating to the townhomes that were substantially complete prior to March 12, 2013 are barred by the Statute of Repose. As noted above, the Certificates of Occupancy were issued for the townhomes between 2009 and 2011. (*See* Exhibits A and B). Because the townhomes were substantially completed prior to March 12, 2013 and there is no applicable exception, Plaintiff's claims are barred by the Statute of Repose.

Additionally, Plaintiff lacks standing to bring this action because the Second Amendment was ineffective. In the alternative, should the Court determine that Plaintiff's claims are not barred

by the Statute of Repose and that Plaintiff has standing, D.R. Horton is entitled to summary judgment Plaintiff's claims for breach of warranty of habitability, unfair trade practices and breach of fiduciary duty. Moreover, any claims for townhomes that have been sold since there was knowledge of the alleged defects are barred against D.R. Horton. For the reasons set forth herein, D.R. Horton is entitled to summary judgment.

II. ARGUMENT & CITATION OF AUTHORITY

1. Summary Judgment Standard

Rule 56(c) of the South Carolina Rules of Civil Procedure ("SCRCP") require that summary judgment be granted:

> if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Rule 56(c), SCRCP. In determining whether summary judgment is proper, the Court must view all evidence in the light most favorable to the non-moving party. Bar v. City of Rock Hill, 330 S.C. 640, 642, 500 S.E.2d 157, 158 (Ct. App. 1998). Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Silvester v. Spring Valley Country Club, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001).

A party seeking summary judgment has the initial burden of demonstrating the absence of the genuine issue of material fact. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This burden may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. Id. (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt

as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial." Id. (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)). The party opposing summary judgment cannot simply rest of mere allegations or denials contained in the pleadings. George v. Empire Fire & Marine Ins. Co., 545 S.E.2d 500 (S.C. 2001). More than a mere scintilla is required to overcome summary judgment. Bravis v. Dunbar, 449 S.E.2d 485 (S.C. App. 1994).

2. Real Party in Interest

Plaintiff is not the real party in interest, nor does it have the right to bring the claims on behalf of the individual homeowners. Pursuant to the original CCRs, the individual homeowners have the right and obligation to maintain and repair their units including the exterior and roofs. (*See* Exhibit C, CCRs, § 5.2). On March 1, 2021, immediately before filing this lawsuit, the homeowners improperly attempted to amend the CCRs to assign the right to bring this lawsuit from the homeowners to Plaintiff. The Second Amendment added the following language:

> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof[.]

Exhibit D. The Second Amendment was filed three days before this lawsuit was filed.

Because the Second Amendment was ineffective, Plaintiff lacks standing to bring these claims, and the lawsuit should be dismissed.

3. Statute of Repose

This case involves alleged defects in the construction of the townhomes at Mansfield. Plaintiff filed suit against D.R. Horton on March 12, 2021. The Statute of Repose for alleged defective improvements to real property is 8 years after "substantial completion of the improvement." S.C. Code § 15-3-640. "A statute of repose creates a substantive right in those

protected to be free from liability after a legislatively determined period of time." Marshall v. Dodds, 426 S.C. 453, 473, 827 S.E.2d 570, 580 (2019) (citing Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). "A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." Florence Cty. Sch. Dist. # 2 v. Interkal, Inc., 348 S.C. 446, 453, 559 S.E.2d 866, 869 (Ct. App. 2002) (citing Langley v. Pierce, 313 S.C. 401, 403-404, 438 S.E.2d 242, 243 (1993)).

In cases of new construction, "a certificate of occupancy … shall constitute proof of substantial completion" unless the parties agree in writing on a different date. S.C. Code § 15-3-640. As noted by the Supreme Court of South Carolina in Lawrence v. General Panel Corp., "the statute of repose begins to run *at the latest* on the date of the certificate of occupancy[.]" 425 S.C. 398, 403, 822 S.E.2d 800, 802 (2019) (emphasis added). Plaintiff has not submitted a written agreement between the homeowners and D.R. Horton which agreed on a different date of substantial completion. Thus, because the Certificates of Occupancy for the units were issued prior to March 12, 2013, Plaintiff's claims are barred by the Statute of Repose. (*See* Exhibits A and B). Moreover, Plaintiff's claims are not saved by any of the exceptions to the Statute of Repose.

A. The Exceptions to The Statute of Repose Do Not Apply

The legislature has laid out several exceptions to the Statue of Repose defense in S.C. Code §§ 15-3-640 and 15-3-670. However, those exceptions are inapplicable, and Plaintiff's claims are barred by the Statue of Repose.

i. Fraud, Gross Negligence and Recklessness

First, pursuant to S.C. Code § 15-3-670(A), the Statute of Repose is not applicable to a defense to claims of "fraud, gross negligence, or recklessness." Moreover, "the violation of a

building code of a jurisdiction or political subdivision does not constitute per se fraud, gross negligence, or recklessness, but this type of violation may be admissible as evidence of fraud, negligence, gross negligence, or recklessness." S.C. Code § 15-3-670(B).

Under South Carolina law, "ordinary negligence, gross negligence, and reckless, willful, or wanton conduct" are all forms of actionable conduct falling along a continuum of negligence that stops short of conduct amounting to an intentional tort. Pier View Condo. Ass'n v. Johns Manville, Inc., Civil Action No. 2:18-22-BHH, 2022 U.S. Dist. LEXIS 38602, *16-17 (D.S.C. Mar. 4, 2022) (quoting Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607, 615 (2011)). "Gross negligence is defined as the 'failure to exercise slight care,' or 'the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Pier View Condo. Ass'n v. Johns Manville, Inc., Civil Action No. 2:18-0022-BHH, 2021 U.S. Dist. LEXIS 29438, at *21 (D.S.C. Feb. 17, 2021) (quoting Toney v. LaSalle Bank Nat. Ass'n, 896 F. Supp. 2d 455, 479-80 (D.S.C. 2012)). "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning – the conscious failure to exercise due care." Pier View Condo. Ass'n v. Johns Manville, Inc., Civil Action No. 2:18-0022-BHH, 2021 U.S. Dist. LEXIS 29438, at *22 (D.S.C. Feb. 17, 2021) (quoting Berberich v. Jack, 709 S.E.2d 607, 612 (S.C. 2011)). In comparison to grossly negligent conduct, "recklessness constitutes a degree of negligent culpability greater than gross negligence is reflected by the fact that punitive damages are not awardable for mere gross negligence." Pier View Condo. Ass'n v. Johns Manville, Inc., 2022 U.S. Dist. LEXIS 38602, *16-17, 2022 WL 632933 (citing Solanki v. Wal-Mart Store No. 2806, 410 S.C. 229, 763 S.E.2d 615, 619 (S.C. Ct. App. 2014)).

Plaintiff's first cause of action is entitled "Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness." While Plaintiff has attempted to plead gross negligence and recklessness in an effort to circumvent the Statute of Repose, Plaintiff has failed to present any facts that would rise beyond simple negligence. *See* Plaintiff's Complaint, ¶ 10. Moreover, as testified to by Plaintiff's expert, the alleged deficiencies are "common" and 'typical" of construction projects. (R. Mease Depo., 73:11-17, 107:16-109:1, 114:24-115:7, 131:1-3). Mr. Mease could only point to one defect as being what he referred to as a "gross dereliction of duty" – the selection of one of the siding materials. (R. Mease Depo., 39:21-40:5). One of the siding materials was unlabeled, and Mr. Mease believes that it is a product that does not belong in the wind zone. (R. Mease Depo., 39:21-40:5, 57:21-59:18, 165:6-23). However, Mr. Mease cannot prove that the unlabeled siding is that product. (Id.). Mr. Mease also testified that he does not know who selected the siding and whether D.R. Horton took any part in that decision. (Id.).

The record contains no evidence that D.R. Horton failed to exercise slight care or intentionally and consciously failed to do something which was incumbent upon D.R. Horton to do or consciously failed to exercise due care. Thus, there is no evidence in the record that D.R. Horton's alleged actions or inactions arose to the level of recklessness and gross negligence. Plaintiff has not and cannot make a *prima facie* case for these causes of action. Therefore, this exception does not apply, and D.R. Horton is entitled to summary judgment on these claims.

Plaintiff also alleged that its claims are not barred by the Statute of Repose because D.R. Horton is guilty of fraud. (*See* Plaintiff's Complaint, ¶ 6). However, in order

> To maintain a claim for fraud, a plaintiff must show by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer's ignorance of its falsity; (7) the

> hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008) (citing Hendricks v. Hicks, 374 S.C. 616, 620, 649 S.E.2d 151, 152-53 (Ct. App. 2007)). Plaintiff has failed to produce evidence of any false representation by D.R. Horton or any evidence of D.R. Horton's knowledge of its falsity or a reckless disregard for its truth or falsity. Further, there is no evidence that D.R. Horton intended Plaintiff to act upon any alleged false representation and Plaintiff's reliance on the representation.

Accordingly, Plaintiff's claims, including the claim for gross negligence and recklessness should be dismissed as they are barred by the State of Repose. In the alternative, Plaintiff is entitled to summary judgment on all of Plaintiff's other claims with only the gross negligence/recklessness claim remaining.

ii. Possession at the Time the Defective Condition Constituted the Proximate Cause of the Injuries

As provided in Section 15-3-670(A),

> [The Statute of Repose] may not be asserted as a defense by a person in *actual possession or control*, as owner, tenant, or otherwise, of the improvement *at the time the defective or unsafe condition constitutes the proximate cause* of the injury . . . for which it is proposed to bring an action, in the event the person in actual possession or control *know, or reasonably should have known of the defective of unsafe condition*.

(Emphasis added). D.R. Horton was not in possession of the units at the time the alleged defective condition constituted the proximate cause of the injuries alleged by Plaintiff. Therefore, this exception also does not apply.

iii. Concealment

The concealment exception provided in subsection (A) is inapplicable as there is no evidence D.R. Horton concealed a cause of action from Plaintiff.[3] Courts in the Fourth Circuit have held that

> The common law clearly distinguishes between concealment and nondisclosure. The former is characterized by deceptive acts or contrivances intended to hide information, mislead, avoid suspicion, or prevent further inquiry into a material matter. The latter is characterized by mere silence.

Pier View Condo. Ass'n v. Johns Manville, Inc., 2022 U.S. Dist. LEXIS 38602, *8, 2022 WL 632933 (D.S.C. March 4, 2022) (citing United States v. Colton, 231 F.3d 890, 899 (4th Cir. 2000); Robertson v. Sea Pines Real Estate Companies, Inc., 679 F.3d 278, 291 n. 2 (4th Cir. 2012)). Thus, the concealment exception requires affirmative acts to mislead or hide information that a cause of action may exist as opposed to the simple nondisclosure of defects. There is no evidence that D.R. Horton took such affirmative acts.

iii. Express Warranty

Pursuant to S.C. Code § 15-3-640, "nothing in this subsection prohibits a person from entering into a contractual agreement prior to the substantial completion of the improvement which extends any guarantee of a structure or component being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement or component." Plaintiff has not submitted a contract extending the warranty period beyond the Statute of Repose. Therefore, this exception to the Statute of Repose also does not apply.

iv. Toxic, Harmful, or Injury-Producing Substance

[3] *See* S.C. Code § 15-3-670(A) ("The limitations provided by 15-3-640 through 15-3-660 are not available as a defense … to a person who conceals any such cause of action").

The last exception in Section 15-3-670 provides that the Statute of Repose "may not be asserted as a defense to an action for … property damage which is: (1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and (2) the result of … exposure to some ***toxic or harmful or injury producing substance***, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma." S.C. Code § 15-3-670(C) (emphasis added). There is no evidence of any toxic, harmful, or injury-producing substance causing property damage. Therefore, this exception to the Statute of Repose does not apply.

Based on the foregoing, the 8-year Statute of Repose bars all of Plaintiff's claims, and D.R. Horton is entitled to summary judgment.

4. Breach of Warranty of Habitability

As outlined above, all of Plaintiff's claims are barred by the Statute of Repose. In the alternative, D.R. Horton is entitled to summary judgment on Plaintiff's breach of warranty of habitability claim. Plaintiff cannot maintain an action against D.R. Horton for breach of warranty of habitability as Plaintiff did not purchase any of the townhomes. The warranty of habitability "springs from the sale of a new house." Kirkman v. Parex, Inc., 369 S.C. 477, 483 n.2, 632 S.E.2d 854, 857 (2006). *See also* Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E2d 730 (1989); Lane v. Trenholm Bldg. Co., 267 S.C. 497, 229 S.E.2d 728 (1976); and Avari v. Shaw, 289 S.C. 161, 34 S.E.2d 715 (1986). Because Plaintiff did not purchase the townhomes, Plaintiff's claim for breach of warranty of habitability fails, and D.R. Horton is entitled to judgment as a matter of law.

5. Acceptance of Defects by New Owners

D.R. Horton has filed a Motion to Compel seeking, among other things, the South Carolina

Property Disclosure forms for each homeowner and information and documents related to any sales in Mansfield since Plaintiff's expert report. Pursuant SCRCP Rule 10(c), D.R. Horton incorporates by reference its arguments submitted in its Motion to Compel and Brief in Support of its Motion to Compel. For any townhomes that have been sold since Plaintiff's expert report, the seller of the unit should have disclosed the alleged defects and those subsequent homeowners would have purchased the homes with knowledge of the alleged defects.

6. Unfair Trade Practices Act

Plaintiff cannot make a *prima facie* case for the violation of the Unfair Trade Practices Act ("UTPA"). The UTPA declares that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commence are … unlawful." S.C. Code Ann. § 39-5-20(a). In order "[t]o recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 337, 732 S.E.2d 166, 174 (2012) (quoting Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)). "A trade practice is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is 'deceptive' when it has a tendency to deceive." Young v. Century Lincoln-Mercury, Inc., 302 S.C. 320, 326, 396 S.E.2d 105, 108 (Ct. App. 1989) (citation omitted). Moreover, "[w]hether a particular act or practice is unfair or deceptive within the meaning of the UTPA statute depends upon the facts surrounding the transaction and its impact on the market place." Id.

The majority of the alleged defects are common and typical in construction projects. (R. Mease Depo., 73:11-17, 107:16-109:1, 114:24-115:7, 131:1-3). There is no evidence that D.R.

Horton engaged in a practice that was offensive to public policy, immoral, unethical, oppressive or that had a tendency to deceive. Because Plaintiff cannot prove the elements required for a claim under the UTPA, D.R. Horton is entitled to summary judgment on that claim.

7. Breach of Fiduciary Duty

Plaintiff cannot make a *prima facie* case for breach of fiduciary duty and, therefore, D.R. Horton is entitled to summary judgment on the clam. To establish a claim for bready of fiduciary duty under South Carolina law, "the plaintiff must prove (1) *the existence of a fiduciary duty*, (2) a breach of the duty *owed to plaintiff by the defendant*, and (3) damages proximately resulting from the wrongful conduct of the defendant." RTF Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-336, 732 S.E.2d 166, 173 (2012) (emphasis added). "A fiduciary relationship exists when one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." Bennett v. Est. of King, 875 S.E.2d 46 (S.C. 2022) (citations omitted).

Plaintiff alleges that D.R. Horton owed "fiduciary and fiduciary-like duties" as a developer and seller. (Complaint, ¶ 25). South Carolina courts have imposed a fiduciary duty on developers to transfer common areas that are in good repair and to provide the property owners' association with the funds necessary to effectuate any needed repairs to the common areas. *See* Magnolia N. Prop. Owners' Ass'n v. Heritage Cmtys., Inc., 397 S.C. 348, 374, 725 S.E.2d 112, 126 (Ct. App. 2012); Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co., LLC, 425 S.C. 276, 292, 821 S.E.2d 509, 517 (Ct. App. 2018). Plaintiff's expert has not evaluated the clubhouse. (R. Mease Depo., 54:11-19). The alleged deficiencies concern the townhomes not the common areas. This fiduciary duty does not apply in the present case.

There is no evidence to support Plaintiff's allegations that D.R. Horton owed fiduciary

duties to Plaintiff and that D.R. Horton breached those alleged duties. Therefore, D.R. Horton is entitled to judgment as a matter of law on Plaintiff's breach of fiduciary duty claim.

III. CONCLUSION

Based on the foregoing, D.R. Horton is entitled to summary judgment on all of Plaintiff's claims as they are barred by the Statute of Repose. Additionally, D.R. Horton is entitled to summary judgment on Plaintiff's claims because Plaintiff lacks standing. In the alternative, D.R. Horton is entitled summary judgment on Plaintiff's claims of gross negligence/recklessness, breach of warranty of habitability, unfair trade practices, breach of fiduciary duty, and any claims for townhomes that have been sold since there was knowledge of the alleged defects.

WHEREFORE, Defendant D.R. Horton, Inc. shall, and hereby does, move the Arbitrator for an Order granting summary judgment in favor of Defendant D.R. Horton.

KENISON, DUDLEY, & CRAWFORD, LLC

s/ Jason M. Imhoff
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John T. Crawford Jr. (SC Bar #69682)
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crawford@conlaw.com
Counsel for Defendant D.R. Horton Inc.

August 30, 2022

Mansfield Townhomes
Permit Information

Unit	Permit Number	Permit Date	CO Date	
3001	RN-09-78100	7/1/2009	11/5/2009	
3005	RN-09-78113	7/1/2009	11/5/2009	
3009	RN-09-78114	7/1/2009	11/5/2009	
3013	RN-09-78111	7/1/2009	11/5/2009	
3017	RN-09-78074	6/30/2009	12/30/2009	
3021	RN-09-78070	6/30/2009	9/7/2010	
3025	RN-09-78069	6/30/2009	8/10/2010	
3029	RN-09-78075	6/30/2009	2/25/2010	
3033	RN-09-78451	8/10/2009	3/26/2010	
3037	RN-09-78481	8/10/2009	10/14/2010	
3041	RN-09-78485	8/10/2009	6/9/2010	
3045	RN-09-78413	8/10/2009	6/9/2010	
3049	RN-09-78482	8/10/2009	3/29/2010	
3053	RN-09-78487	9/30/2010	8/10/2009	
3057	RN-10-83483	11/18/2010	5/19/2011	
3061	RN-10-83484	11/18/2010	8/25/2011	
3065	RN-10-83486	11/18/2010	8/25/2011	
3069	RN-10-83487	11/18/2010	8/26/2011	
3073	RN-10-83489	11/18/2010	9/1/2011	
3077	RN-10-83490	11/18/2010	6/8/2011	
3081	RN-10-82552	10/6/2010	4/27/2011	
3085	RN-10-82624	10/6/2010	7/14/2011	
3089	RN-10-82631	10/6/2010	6/17/2011	
3093	RN-10-82634	10/6/2010	4/27/2011	
3097	RN-10-81179	5/6/2010	10/14/2010	
3101	B-05-52081	4/12/2005	12/16/2005	Clubhouse
3105	RN-10-81177	5/6/2010	9/30/2010	

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

10/27/2010

PERMIT #	RN-10-081180
PROJECT NAME:	D R Horton
ADDRESS:	3109 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE: OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 000561

68-0002

DRH 000668

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

09/30/2010

PERMIT #	RN-10-081177
PROJECT NAME:	D R Horton
ADDRESS:	3105 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE: / **OCCUPANCY TYPE:**	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1639

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

10/14/2010

PERMIT #	**RN-10-081179**
PROJECT NAME:	D R Horton
ADDRESS:	3097 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE: OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 000809

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

04/27/2011

PERMIT #	**RN-10-082634**
PROJECT NAME:	D R Horton
ADDRESS:	3093 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE:	
OCCUPANCY TYPE:	R-2 Residential, multiple family
SQUARE FOOTAGE:	2242

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 000919

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

06/17/2011

PERMIT #	**RN-10-082631**
PROJECT NAME:	D R Horton
ADDRESS:	3089 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE:	
OCCUPANCY TYPE:	R-2 Residential, multiple family
SQUARE FOOTAGE:	2242

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 000978

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

07/14/2011

PERMIT #	**RN-10-082624**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3085 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC & IECC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-2 Residential, multiple family**
SQUARE FOOTAGE:	**2242**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001058

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

04/27/2011

PERMIT #	**RN-10-082552**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3081 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Town Home 2006 IRC & IECC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-2 Residential, multiple family**
SQUARE FOOTAGE:	**2242**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001114

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

06/08/2011

PERMIT #	**RN-10-083490**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3077 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC 29466**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC & IECC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-3 and IRC Residential, one and two family**
SQUARE FOOTAGE:	**1894**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001173

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

C E R T I F I C A T E O F O C C U P A N C Y

09/01/2011

PERMIT # RN-10-083489

PROJECT NAME: D R Horton

ADDRESS: 3073 Park West Blvd

CITY, ST ZIP: Mt Pleasant, SC 29466

Contractor's Name D R Horton Inc.

503 Wando Park Blvd Ste 200
Mt Pleasant SC 29464

CONSTRUCTION TYPE: New Townhome 2006 IRC & IECC

PROPOSED USE:

OCCUPANCY TYPE: R-3 and IRC Residential, one and two family

SQUARE FOOTAGE: 1894

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001227

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

09/30/2010

PERMIT #	RN-09-078487
PROJECT NAME:	D R Horton
ADDRESS:	3053 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE: OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001365

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

03/29/2010

PERMIT #	**RN-09-078482**
PROJECT NAME:	D R Horton
ADDRESS:	3049 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-2 Residential, multiple family
SQUARE FOOTAGE:	1863

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001434

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

06/09/2010

PERMIT #	**RN-09-078413**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3045 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC 29464**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-3 and IRC Residential, one and two family**
SQUARE FOOTAGE:	**1863**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001538

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

06/09/2010

PERMIT #	**RN-09-078485**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3041 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-2 Residential, multiple family**
SQUARE FOOTAGE:	**1863**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001596

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

10/14/2010

PERMIT #	RN-09-078481
PROJECT NAME:	D R Horton
ADDRESS:	3037 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE: OCCUPANCY TYPE:	R-2 Residential, multiple family
SQUARE FOOTAGE:	1863

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001654

68-0020

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

03/26/2010

PERMIT #	**RN-09-078451**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3033 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-2 Residential, multiple family**
SQUARE FOOTAGE:	**1912**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001713

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

02/25/2010

PERMIT #	**RN-09-078075**
PROJECT NAME:	D R Horton
ADDRESS:	3029 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001775

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

08/10/2010

PERMIT #	**RN-09-078069**
PROJECT NAME:	D R Horton
ADDRESS:	3025 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1402

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001832

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

09/07/2010

PERMIT #	**RN-09-078070**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3021 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC 29464**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-3 and IRC Residential, one and two family**
SQUARE FOOTAGE:	**1402**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001894

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

12/30/2009

PERMIT #	RN-09-078074
PROJECT NAME:	D R Horton
ADDRESS:	3017 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001958

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

11/05/2009

PERMIT #	**RN-09-078111**
PROJECT NAME:	D R Horton
ADDRESS:	3013 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhouse 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

11/05/2009

PERMIT #	**RN-09-078114**
PROJECT NAME:	D R Horton
ADDRESS:	3009 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhouse 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1402

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 002082

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

11/05/2009

PERMIT #	**RN-09-078113**
PROJECT NAME:	D R Horton
ADDRESS:	3005 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhouse 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1402

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 002151

Marsfield

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

11/05/2009

PERMIT #	**RN-09-078100**
PROJECT NAME:	D R Horton
ADDRESS:	3001 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 002214

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BK P 638PG409

THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO THE SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10, et. seq., CODE OF LAWS OF SOUTH CAROLINA, 1999

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

Upon recording, please return to:

Willcox, Buyck & Williams, P.A.
1991 Glenns Bay Road
Surfside Beach, SC 29575

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BK P 638PG413

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MANSFIELD AT PARK WEST

This Declaration of Covenants, Conditions and Restrictions is made this 10th day of September, 2007, by **D.R. HORTON, INC.**, a Delaware corporation with an address of 503 Wando Park Blvd., Suite 200, Mt. Pleasant, SC 29464 (hereinafter the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference; and,

WHEREAS, the Property has been previously submitted to certain imposed mutually beneficial covenants, conditions, restrictions and easements under a general plan of improvement for the benefit of all owners of residential property within a residential community known as "Park West" pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Park West Master Association dated December 17, 1997 and recorded on December 17, 1997 in Book P294 at Page 275, et seq., including all amendments thereto, records of Charleston County (hereinafter "The Master Declaration"); and,

WHEREAS, the real property described in the attached Exhibit "A" is a portion of that real property subjected to The Master Declaration; and,

WHEREAS, pursuant to Paragraph 1.1.15, Declarant herein is defined as a "Developer" pursuant to The Master Declaration, and is holding the Property for purpose of development into Units; and

WHEREAS, pursuant to Paragraphs 1.1.26, 1.1.27 and 2.4..4 a Developer may submit its Property within Park West to additional restrictions by creating a Subordinate Association and filing a Subordinate Declaration; and

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the property known as Mansfield at Park West and the interrelationships of the component residential associations, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such property as is now or may hereafter be submitted to this Declaration. The Association hereby created may perform educational, recreational, charitable and other social welfare activities

NOW, THEREFORE, Declarant, D.R. Horton, Inc., hereby declares as follows:

ARTICLE I
Creation of the Community

1.1 Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A" and as Developer under the Master Declaration, hereby declares that the real property described in Exhibit "A" and any additional property as may by subsequent amendment be added to and subjected to this Declaration, shall be held, sold and conveyed subject to The Master Declaration and the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the property comprising Mansfield at Park West. An integral part of the development plan is the creation of a townhome neighborhood known as Mansfield at Park West, Inc. (the "Townhome Association"), an association comprised of all Owners of real property in Mansfield at Park West, to own, operate or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

1.2 Binding Effect.

The property described in Exhibit "A" and any additional property which is made a part of Mansfield at Park West shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title or interest in any portion of Mansfield at Park West, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of each owner thereof. The provisions set forth in this Declaration shall be applicable only to Owners of any Units as defined herein in Article II Section 2.5.

This document does not and is not intended to create a condominium within the meaning of the South Carolina Horizontal Property Regime Act.

This Declaration, as it may be amended and supplemented from time to time, shall remain in effect and shall be enforceable by the Declarant, the Townhome Association, any Owner, and their respective legal representatives, heirs, successors and assigns for a term of Twenty (20) years from the date this Declaration is Recorded. After such time, this Declarations shall be extended automatically for successive periods of Ten (10) years each, unless an instrument signed by a majority of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration in which case it shall terminate as of the date specified in such instrument. Nothing in this section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3 Governing Documents.

The Governing Documents create a general plan of development for Mansfield at Park West. The Governing Documents include The Master Declaration and this Declaration which shall be in addition to the covenants, conditions, restrictions and easements set forth in the Master Declaration. To the extent that this Declaration conflicts with The Master Declaration the latter shall control except to the extent the former establishes a higher or stricter standard or requirement for Mansfield at Park West.

No Person shall record additional covenants, conditions, or restrictions affecting any portion of Mansfield at Park West without Declarant's written consent, so long as Declarant owns any portion of the real property described in Exhibit "A" or "B". Thereafter, Owners representing at least Seventy-five (75%) percent of the Townhome Association's total votes must consent to such additions. Any instrument Recorded without the required consent is void and of no force and effect.

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

ARTICLE II
Definitions

2.1. **"Area of Common Responsibility"** shall mean and refer to the Common Area, together with those areas, if any, which by contract with any residential or condominium association with any commercial establishment or association, or with any apartment building owner or cooperative within Townhomes, become the responsibility of the Townhome Association.

2.2 **"Assessment":** shall include without limitation, general, special, specific or Neighborhood assessment.

2.3 The **"Board of Directors** or **"Board":** The body responsible for administering the Townhome Association, selected as provided in the By-Laws, a copy of which is attached hereto as Exhibit "C" and serving the same role as the board of directors under South Carolina corporate law.

2.4 **"Common Area" or "Common Properties":** All real and personal property now or hereafter owned by the Townhome Association for the common use and enjoyment of the Owners.

2.5 **"Common Expenses":** The actual and estimated expenses of operating the Townhome Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Articles of Incorporation.

2.6 **"Community":** The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with this Declaration and commonly known as Mansfield at Park West.

2.7 **"Declarant":** D.R. Horton, Inc., a Delaware Corporation, or any successor or assign which is designated as Declarant in a Recorded Instrument executed by the immediately preceding Declarant.

2.8 **"FNMA, Freddie MAC, VA & FHA"** shall mean and refer to the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and

Federal Housing Authority, respectively.

2.9 **"Master Association"**: Park West Master Association, Inc.

2.10 **"Member"**: A person or entity entitled to membership in the Townhome Association, as provided herein.

2.11 **"Neighborhood"**: Separately designed, developed residential areas comprised or various types of housing initially or by amendment made subject to this Declaration, for example and as by way of illustration and not limitation: patio home development, condominiums, or fee simple townhouses. In the absence of a specific designation of separate parcel status, all property made subject to this Declaration shall be considered a part of the same parcel; provided, however, the Declarant may designate in any subsequent amendment adding property to the terms and conditions of this Declaration that such property shall constitute a separate parcel or parcels.

2.12 **"Neighborhood Assessments"**. Neighborhood Assessments for common expenses for herein or by any supplementary Declaration shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the owners of the Units against which the specific parcel assessment is levied and of maintaining the property within a given Neighborhood, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below.

The Neighborhood Assessment shall be levied equally against owners of Units in a Neighborhood for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

2.13 **"Owner"**: The record owner, whether one or more persons or entities, of any Townhome Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Townhome Unit is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser, (rather than the fee owner) shall be considered the Owner for purposes of this Declaration.

2.14 **"Person"**: A natural person, a corporation, a partnership, trustee, or other legal entity.

2.15 **"Properties" or "Property"**: The real property described in Exhibit "A" attached hereto and shall further refer to such additional property as may hereafter be annexed by amendment to this Declaration or which is owned in fee simple by the Townhome Association.

2.16 **"Townhome Association" or "Association"**: Mansfield at Park West, Inc., a South Carolina nonprofit corporation, its successors and assigns.

2.17 **"Unit"**: For purposes of this Declaration, "Unit" shall mean and refer to "Townhome Units". Townhome Units are Units as defined in The Master Declaration. Moreover, a Townhome Unit consists of any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction or improvements, a single dwelling site for a Townhome that will be attached by one or more party

walls to another Townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units that are appurtenant to and serve each Townhome Unit (including, but not limited to, compressors, conduits, wires and pipes) and any driveway, porch, deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Townhome Unit when such Townhome Unit is initially constructed.

For the purpose of Article X of this Declaration, a newly constructed Unit shall come into existence and shall be liable for assessements upon the issuance of a certificate of occupancy by the appropriate agency of Charleston County, the City of Mount Pleasant or any other appropriate governmental or quasi-governmental entity.

ARTICLE III
Property Rights

3.1 Members' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area subject to any restrictions or limitations contained in any deed or amendment to this Declaration conveying to the Towhnome Association or subjecting to this Declaration such property. Any owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and invitees subject to reasonable regulation and in accordance with procedures the Townhome Association may adopt.

3.2 Title to Common Properties. Declarant shall convey legal title to the Common Properties to the Townhome Association prior to the end of the Declarant Control Period, or to the Master Association, as appropriate, in accordance with the provisions of Section 2.2.3 of the Master Declaration. Further, Declarant shall remove all liens and encumbrances on the Common Properties, except those created by or pursuant to the Declaration, subject, however, to the following covenants, which shall be deemed to run with any land conveyed to the Townhome Association and shall be binding upon the appropriate Association, its successors and assigns:

> In order to preserve and enhance the property values and amenities of the community, the Common Properties and all facilities now or hereafter built or installed thereon, shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Properties shall include, but not be limited to, the repair of damage to pavement, walkways, outdoor lighting, and entrance. Further, it shall be an express affirmative obligation of the Association to keep all of the Common Properties conveyed to it and facilities appurtenant thereto, open, adequately staffed and operating during those months and during such hours as such property would normally be in operation in this locality.

This Section shall not be amended, except as provided for in Article XVIII, to reduce or eliminate the obligation for maintenance and repair of the Common Properties.

3.3 Additions to Common Properties. In the event Declarant exercises the option set forth in Article VIII of this Declaration to bring additional properties within the scheme of this Declaration, it shall also have the right but not the obligation to construct additional recreational facilities and convey such land and facilities to the Townhomes Association or Master Association as Declarant deems appropriate.

3.4 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Townhome Association and/or Master Association, as provided in its By-Laws to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulation;

(b) The right of the Townhome Association and/or Master Association to charge reasonable admission and other fees for the use of the Common Properties;

(c) The right of the Townhome Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no dedication or transfer, determination as to the purpose or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast seventy-five (75%) percent of the eligible votes has been recorded, agreeing to such dedication, transfer, purpose or condition and unless written notice of the action is sent to every Member at least Thirty (30) days in advance of any action taken;

(d) The right of the Declarant and of the Townhome Association to grant and reserve easements and rights-of-way, in, through, under, over and across the Common Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, and other utilities, and the right of the Declarant to grant and serve easements and rights-of-way, in, through, under, over, upon and across the Common Properties for the completion of the Declarant's work.

ARTICLE IV
Membership and Voting Rights

4.1 Membership. Every person or entity who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall be determined to have a membership in the Townhome Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No Owner, whether one or more persons, shall have more than one membership per Unit owned. In the event of multiple owners of a Unit, votes and rights of use

and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote for each class of membership applicable to a particular Unit be cast for each Unit.

4.2 Voting. The Towhnome Association shall have two (2) classes of membership, Class "I" and Class "II" as follows:

(a) Class "I". Class "I" members shall be all Owners with the exception of the Class "II" members, if any.

Class "I" members shall be entitled on all issues to one (1) vote for each Unit in which they hold the interest required for membership by Section 1 hereof; there shall be only one (1) vote per Unit. When more than one person holds such interest in any Unit, the vote for such Unit shall be exercised as those owners themselves determine and advise the Secretary of the Townhome Association prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one person seeks to exercise it.

(b) Class "II". The sole Class II Member shall be the Declarant, its successor or assign. At the time Declarant records a subdivision plat of the Townhomes in the records of Charleston County, South Carolina, for any of the real property described in Exhibit "A" or "B", or made subject to this Declaration as provided herein, Declarant shall have voting rights under this section of all Units shown on such Plat(s). As to all matters with respect to which Members are given the right to vote under the Governing Documents, the Declarant shall be entitled to ten (10) votes per Unit owned and in addition, shall be entitled to appoint all of the members of the Board until termination of the Class II Membership. The Class II Membership shall cease to exist and shall be converted to Class I Membership only upon the earlier of the following:

(1) One Hundred Twenty (120) days after the conveyance by Declarant of all of ninety (90%) percent of the Units within the real property described in Exhibit "A" or "B" or made subject to this Declaration pursuant to Section 10.1 hereof; or

(2) A date selected by Declarant as evidenced by a recorded instrument, but not later than ten (10) years after the recording of this Declaration.

ARTICLE V
Maintenance

5.1. Townhome Association's Responsibility. The Townhome Association shall maintain and keep in good repair the Common Area not conveyed to the Master Association. The Townhome Association shall also maintain and keep in good repair the exterior of the Units, including but not limited to the landscaping around the Units which shall include the back yard of a Unit unless the back yard of such Unit has been enclosed by a fence which was approved by the Townhome and/or Master Association, and such maintenance to be funded, as hereinafter provided; provided, however, any sidewalk which may be a part of the Common Area, if not dedicated to public maintenance, shall be maintained by the Townhome Association. This

maintenance shall include the following:

(a) periodic treatment of all exterior walls and foundations of the Units for termites; provided the Townhome Association shall not be liable if such treatment proves to be ineffective; and

(b) maintaining all of the landscaping and other flora around each Unit in a manner and upon terms and conditions as determined by the Townhome Association, which maintenance shall include mowing lawns, pruning shrubbery, weed control removal and replacement of dead trees and shrubs and irrigation; and,

(c) maintenance, repair, and replacement as necessary, including pressure washing, any sidewalks and driveways, including paved portions of the Units adjacent to the garage of any Unit if such driveway or paved portion is shared by two or more Units; and,

(d) maintenance, repair, and replacement as necessary of any irrigation equipment, including, but not limited to sprinklers, wells, pumps water lines and time clocks wherever located, serving the front yard of each Unit, except that the Townhome Association shall have no responsibility for any of the aforementioned which is installed or altered by any Owner or Occupant of a Unit or his or her guest, agent, employee or contractor; and,

(e) maintenance, repair, and replacement as necessary perimeter landscaping or walls within the perimeter easement are, if such perimeter walls or landscaping are initially installed by the Declarant or the Townhome Associations; and,

(f) maintenance, repair, and replacement as necessary of any and all structures and improvements situated upon the Common Area owned by the Townhome Association.

All costs and expenses related to the Townhome Association's maintenance responsibility hereunder shall be part of the General Assessment; provided however that any cost or expense incurred by the Townhome Association as a result of the negligence or misconduct of any Owner or Occupant of a Unit or his or her guest, agent, employee or contractor shall be assessed as a Specific assessment against the Owner of such Unit.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, backyards and other improvements comprising the Unit in a manner consistent with the standards of Mansfield at Park West and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. Each Owner's maintenance responsibility shall include, but shall not be necessarily limited to, the following:

(a) maintenance, repair, and replacement as necessary all pipes, lines, wires, conduits or other apparatus which serve only the Unit located wholly within the Unit boundaries, including all utility lines serving on the Unit; and

(b) maintenance, repair, and replacement as necessary of the exterior surfaces of the Units, including window, and window frames, doors, and door frames, including garage doors, and any shutters, eaves, fascia, gutters and down spouts on the exterior of the Units; and

(c) maintenance, repair, and replacement as necessary of the foundation and structure of the Unit; and

(d) maintenance, repair, and replacement as necessary, including pressure washing of driveways, unless the driveway is shared by more than one Unit; and,

(e) maintenance, repair and replacement as necessary of the roof including shingle and roof decking of the Unit.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Townhome Association may perform such maintenance responsibilities and assess all costs incurred by the Townhome Association against the Unit and the Owner as a Specific Assessment in accordance with Article X. The Townhome Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Notwithstanding anything to the contrary contained herein, the Townhome Association, and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been grossly negligent in the performance of its maintenance responsibilities.

ARTICLE VI
Insurance and Casualty Losses

6.1. Insurance. The Townhome Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area not herein conveyed to the Master Association against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Common Area, the Townhome Association, and its members for all damage or injury caused by the negligence of the Townhome Association or any of its members or agents, and, if reasonably available, directors' and officer's liability insurance. The public liability policy shall have minimum limits in the amounts that the Board deems reasonable. Premiums for all insurance on the Common Area shall be common expenses of the Townhome

Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Cost of insurance coverage obtained for the Common Area shall be included in the General Assessment, as defined in Article X. hereof.

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

(a) All policies shall be written with a company licensed to do business in South Carolina holding a rating of AA or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Unit Owners and their mortgagees as their interest may appear.

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

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

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

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

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

(iii) That no policy may be cancelled, invalidated or suspended on account of any one or more individual owners;

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

(v) That any "other insurance" clause in any policy exclude individual owners' policies from consideration.

6.2. No Partition. Except as is permitted in the Declaration, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 4 of this Article in the case of damage or destruction, or unless the Properties have been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

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

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

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 3(a) hereof.

6.4 Damage and Destruction.

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

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Townhome Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Townhome Association within said period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not

exceed and additional sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event any damage or destruction to the Common Area includes damage or destruction to any exterior portion or roof of a Unit, the amount of the insurance proceeds paid as a result of such damage or destruction shall be used to repair or reconstruct such Common Area. If the insurance proceeds are not sufficient to pay for such repair or reconstruction, the Townhome Association shall pay all amounts necessary to repair or reconstruct said Common Area.

(d) In the event that it should be determined by the Townhome Association pursuant to subparagraph (b) above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Townhome in a neat and attractive condition and any insurance proceeds paid as a result of such damage or destruction shall be paid to the Townhome Association.

6.5 Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Townhome Association's members, levy a special assessment against all owners in proportion to the number of Units owned by such owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Townhome Association.

6.6 Owner's Required Coverage. Each Owner shall be responsible for obtaining and maintaining at all times insurance covering all portions of his or her Unit including contents. In addition, to the extent not insured by policies of the Townhome Association or the extent insurable losses result in the payment of deductibles under the Townhome Association's policies, every Owner shall obtain and maintain at all times insurance covering consequential damages to any other Unit or the Common Area due to occurrences originating with the Owner's Unit and caused by the Owner's negligence, the Owner's failure to maintain the Unit or any other casualty within the Unit, which caused damage to any other Unit or the Common Area.

In the event of damage or destruction to a Unit, the Owner shall have sixty (60) days to complete any necessary repairs or reconstruction. Such repair or reconstruction shall conform to the architectural requirements set forth in this Declaration. In the event that an Owner does not complete the necessary repairs or reconstruction, the Townhome Association shall have the right, but not the obligation, to enter upon the Unit without further notice and complete the necessary repairs or reconstruction to bring the Unit into compliance with the Community Standard. All amounts expended by the Towhnome Association to complete the repairs or reconstruction shall be assessed as a Specific Assessment against the Unit and the Owner in accordance with Article X. The Townhome Association shall not be held liable for any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents or any injury, damages, or loss arising out of the manner or quality of the

repairs or reconstruction to any Unit undertaken by the Towhnome Association due to the failure of an Owner to comply with the requirements of this paragraph unless and only to the extent that it has been grossly negligent in the performance of such repairs or reconstruction.

At the Board's request, Owners shall file a copy of each individual policy or policies covering his or her Unit and personal property with the Board within ten (10) days after receiving such request. Such Owner shall promptly notify the Board in writing in the event such policy is canceled.

ARTICLE VII
Condemnation

Whenever all or any part of the Common Area not conveyed to the Townhome Association shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Units subject to the taking, if any) by any authority having the power of condemnation or eminent domain, each owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Townhome Association, as Trustee for all owners, to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been have been constructed, then, unless within sixty (60) days after taking the Declarant and at least seventy-five (75%) percent of the Class "I" members of the Towhnome Association shall otherwise agree, the Townhome Association shall restore or replace such improvements so taken on the remaining land included in the Common Area, to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Townhome Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Townhome Association and used for such purposes as the Board of Directors of the Townhome Association shall determine.

ARTICLE VIII
Annexation of Additional Property

8.1 **Annexation Without Approval of Class "I" Membership.** As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option, but not the obligation, from time to time at any time until twenty (20) years from the date this Declaration is recorded in the office of the Register of Mesne Conveyances for Charleston County to subject to the provisions of the Declaration and the jurisdiction of the Townhome Association all or any portion of the real property described in Exhibit "B" attached hereto and by reference made a part thereof, whether in fee simple or leasehold, by filing in the Charleston County, South Carolina records, an amendment annexing such property. Such

amendment to this Declaration shall not require the vote of members. Any such annexation shall be effective upon the filing for record of such amendment, unless otherwise provided therein.

Declarant shall have the unilateral right to transfer to any other person the said right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property described in said Exhibit "B" attached hereto.

The Declarant, its successors and assigns, shall have the right but not the obligation to bring the proposed additional development within the scheme of this Declaration unless such future developments intend to use the recreational facilities, roads, parking areas, sidewalks and tie into and connect with the sewer, water and drainage lines in the existing Properties.

Such supplementary Declaration may contain such complimentary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the added Property as are not inconsistent with the scheme of this Declaration. In no event, however, shall such supplementary Declaration revoke, modify or add to the Covenants, Restrictions, Easements, Charges and Lien establishing this Declaration within the Properties.

8.2 **Annexation With Approval of Class "I" Membership.** Subject to the written consent of the owner thereof, upon the written consent or affirmative vote of a majority of the Class "I" members other than Declarant of the Townhome Association present or represented by proxy at a meeting duly called for such purpose, the Townhome Association may annex real property other than that shown on Exhibit "B", and following the expiration of the right in Section 1, the property shown on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Townhome Association by filing of record in the office of the Register of Mesne Conveyances for Charleston County, South Carolina, a supplementary amendment in respect to the property being annexed. Any such supplementary amendment shall be signed by the President and the Secretary of the Townhome Association, and any such annexation shall be effective upon filing, unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Class "I" members of the Townhome Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Townhome Association for regular or special meetings, as the case may be.

ARTICLE IX
Rights and Obligations of the Townhome Association

9.1 **The Common Area.** The Townhome Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

9.2 **Personal Property and Real Property for Common Use.** The Townhome

Association, through action of its Board of Directors, may acquire, hold and dispose of any Common Properties, whether tangible or intangible personal property or real property. The Board, acting on behalf of the Townhome Association, shall accept any real or personal property, leasehold, or other property interests within Townhomes conveyed to it by the Declarant.

9.3. **Rules and Regulations.** The Townhome Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the owner's Unit or Units and suspension of the right to vote and the right to use the Common Area. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. Imposition of Sanctions shall be as provided in the By-Laws.

9.4 **Implied Rights.** The Towhnome Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE X
Assessments

10.1 **Creation of General Assessment.** There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. General Assessments shall be allocated equally among all Units within the Townhome Association and shall be for expenses determined by the Board to be for the benefit of the Townhome Association as a whole. Each owner, by acceptance of his or her deed, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest at the highest rate allowable under the laws of South Carolina from time to time relating to usury for commercial real estate loans, costs, and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made.

Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual assessment for delinquents; unless the Board otherwise provides, the assessments shall be paid in monthly installments. It is the intention of this Declaration that assessments for the Townhome Association and the Master Association be collected by each association individually and that the creation of Townhome Association assessments shall in no way alleviate or reduce the amount of assessments which may be due under The Master Declaration. Such a system shall prejudice neither the right for direct collection nor the lien rights set out in Section 4 of this Article. Provided however, that

pursuant to Section 6.9 of the Master Declaration, the Master Association may elect to bill the Townhome Association for any assessments due from the Owners thereby obligating the Townhome Association to collect any amounts due directly from the Owners.

10.2 Computation of Assessment. The Board shall prepare an annual budget, and the following provisions shall apply:

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Townhome Association during the coming year. The budget shall include a capital contribution establishing a reserve fund, in accordance with a capital budget separately prepared, and shall separately list general and parcel expenses, if any. The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Unit for the following year, to be delivered to each owner at least fifteen (15) days prior to said budget's effective date. The budget and the assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board disapproves the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

10.3 Working Capital. The Townhome Association shall collect from each purchaser of a Unit at the time of purchase a working capital assessment in an amount equal to Two Hundred Fifty and no/100 ($250.00) Dollars. The funds shall be used for such legal purposes as the Board of Directors may determine. Said working capital contribution shall be collected on all initial and all re-sales of Units.

10.4 Special Assessments. In addition to the assessments authorized in Section 1, the Townhome Association may levy a Special Assessment in any year. So long as the total special assessments authorized under this Article do not exceed Five Hundred and NO/100's ($500.00) Dollars in any one year, the Board, by majority vote, may impose the special assessment. If such total be exceeded, any special assessment shall be effective only with the approval of a majority of the Class "I" members.

10.5. Specific Assessments. The Townhome Association acting by and through its Board shall have the power to levy Specific Assessments against a particular Unit as follows:

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

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the

Bylaws, before levying any Specific Assessment under this subsection (b).

10.6 Lien for Assessments. Such assessment shall constitute a lien on each Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust) made in good faith and for value.

The Townhome Association, acting on behalf of the owners, shall have the power to bid for the Unit at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Townhome Association following foreclosure; (1) no right to vote shall be exercised on its behalf; (2) no assessment shall be assessed or levied on it; and (3) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Townhome Association as a result of foreclosure.

Suit to recover a money judgment for unpaid common expenses, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

10.7 Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Towhnome Association, as shown on the capital budget, with respect both to amount and timing to annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment, as provided in Section 2 of this Article.

10.8 Collection of Assessments and Default. The Board may take prompt action to collect any assessment for common expenses due from any owner which remains unpaid for more than ten (10) days from the due date. Any regular, specific or special assessment levied which is not paid by the first (1st) day of each month, shall be in default. The assessment together with interest thereon at the rate of ten (10%) percent per annum and the costs of collection, including reasonable attorney fees, thereof, shall be a continuing lien upon the Unit belonging to the Owner against whom such assessment is levied. The Owner obligated to pay this delinquent assessment, may, by resolution of the Board of Directors, be subject to such penalty or "late charge" as the Board of Directors may fix prior to the fiscal period in which non-payment occurs. The Towhome Association may bring an action at law against the owner personally obligated to pay the same or foreclose and/or enforce the lien against the Unit then belonging to said owner in the manner now or hereinafter provided for the foreclosure of mortgages or other liens on real property in the State of South Carolina, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, in either of which events interest, costs and reasonable attorney's fees shall be added to the amount of cash assessment.

10.9. Statement of Account. Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Townhome Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting Person personally or by fax or by email. The Townhome Association may require the payment of a reasonable processing fee for issuance of such statement.

Such statement shall bind the Townhome Association in favor of Persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquired its interest after requesting such statement.

10.10. Budget Deficits During Declarant Control.

During the Declarant Control Period, Declarant may (but shall not be required to):

(a) Advance funds to the Association sufficient to satisfy the deficit, if any, between the Association's actual operating expenses and the sum of the Base, Special, Neighborhood, and Specific Assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of Declarant. Declarant's failure to obtain a promissory note shall not invalidate the debt;

(b) Cause the Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan; or

(c) Acquire property for, or provide services to, the Association or the Area of Common Responsibility. Declarant shall designate the value of the property or the services provided, and such amounts, at Declarant's request, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

ARTICLE XI
Architectural Standards and Control

No building, fence, wall or other structure, or change or alteration to the exterior of the Units, or in landscaping shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to

surrounding structures and topography by the Board of Directors of the Townhome Association, or by an Architectural Committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The provisions of this paragraph shall not apply to Declarant. Further, the provisions of this paragraph shall be in addition to and not in place of any and all restrictions and/or requirements for approval as set forth in The Master Declaration.

The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that Units are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners; (d) that views from any other Units or the Area of Common Responsibility are protected; or (e) that no defects exist in approved construction.

Declarant, the Townhome Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

ARTICLE XII
Use Restrictions

12.1. Framework for Regulation. The Governing Documents, including the initial Rules and Regulations which are set forth in the attached Exhibit "C", establish as part of the general plan of development for the Townhomes a framework of affirmative and negative covenants, easements, and restrictions to govern the Townhomes. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology which inevitably will affect the Townhomes, its Owners, and residents. Toward that end, this Article establishes procedures for modifying and expanding the initial Rules and Regulations set forth in Exhibit "C."

12.2. Regulation Making Authority.

(a) Board Authority. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Towhnome Association and its Members, the Board may adopt, repeal, and modify regulations governing matters of conduct and aesthetics and the activities of Members, residents, and guests within the Community, as defined by the Rules and Regulations set forth in Exhibit "C". The Board shall send notice by mail to all Members concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to

be heard at a Board meeting prior to such action being taken.

(b) Declarant's Authority. Notwithstanding the above provision, during the Declarant Control Period, the Declarant shall have the unilateral right to repeal, limit, modify or expand any of the initial Rules and Regulations set forth in Exhibit "C" without prior notice to the Board or to Members. However, any such amendment shall not materially adversely affect the substantive rights of any Owners, nor shall it adversely affect title to any Unit without the consent of the affected Owner(s).

(c) Members' Authority. Alternatively, Members representing more than fifty percent (50%) of the total votes in the Townhome Association, at a Townhome Association meeting duly called for such purpose, may vote to adopt regulations which modify, cancel, limit, create exceptions to, or expand the Rules and Regulations then in effect. Notwithstanding anything contained herein to the contrary, during the Declarant Control Period, any such action by the Members shall not be valid unless and until Declarant provides its written approval which approval or denial shall be granted in Declarant's sole and exclusive discretion.

(d) Notice; Opportunity To Disapprove. Notice of any Board resolution or Member action adopting, repealing, or modifying regulations shall be sent to all Members at least thirty (30) days prior to the effective date. Subject to Declarant's disapproval rights under the Bylaws, the resolution or Member action shall become effective on the date specified in the notice unless (i) Members petition for a special meeting, in accordance with the Bylaws, to reconsider such resolution, and (ii) the resolution is disapproved at the meeting by Members representing more than fifty percent (50%) of the total votes in the Townhome Association.

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

(f) Common Area Administrative Rules. The procedures required under this Section shall not apply to the enactment and enforcement of Board resolutions or administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment and act in accordance with the business judgment rule, as described in the Bylaws, in the enactment, amendment, and enforcement of such administrative rules and regulations.

12.3 Limitations on Rules and Regulations. Except as may be contained in this Declaration either initially or by amendment, all Rules and Regulations shall comply with the following provisions:

(a) Signs and Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt

time, place, and manner restrictions with respect to displays visible from outside the dwelling. No Owner may post or display any sign, billboard, banner or item of similar nature so as to be visible outside of any dwelling without the prior written approval of the Architectural Review Committee, including but not limited to a "for sale," "for rent," or "garage sale" sign. No rules shall regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs (including design criteria) and limit to a reasonable number the number of signs that may be posted. No sign shall be larger than 18" x 24" and any Owner posting an approved sign shall be responsible for removing such sign in a timely manner and shall be subject to enforcement actions for failing to do so. Notwithstanding anything contained herein to the contrary, the Townhome Association shall have the right, but not the obligation, to exercise self-help and to enter onto a Unit (but not the interior of a Unit) in a non-emergency situation, without notice and opportunity for hearing prior thereto for the purpose of removing any sign, billboard, banner or other item of similar nature posted or displayed in violation of this provision.

(b) Household Composition. No rule established pursuant to this Article shall interfere with the Owners' freedom to determine the composition of their households.

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

(d) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Townhome Association. Nothing in this provision shall prevent the Townhome Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the Governing Documents.

(e) Alienation. No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Unit or require consent of the Townhome Association or Board for leasing or transfer of any Unit; however, the Townhome Association or the Board may require a minimum lease term of up to twelve (12) months.

(f) Reasonable Rights To Develop. No rule or action by the Townhome Association shall unreasonably impede Declarant's right to develop the Community in accordance with the rights reserved to Declarant in this Declaration.

12.4 Owners' Acknowledgment and Notice to Purchasers.

All Owners and prospective purchasers are given notice that use of their Units and the Common Area is limited by the Rules and Regulations, as they may be amended, limited, repealed, expanded, or otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision, that the Rules and Regulations may change from time to time, and that the current Rules

and Regulations may not be set forth in a Recorded instrument. All purchasers of Units are on notice that the Townhome Association may have adopted changes to the Rules and Regulations. The Townhome Association shall provide a copy of the current Rules and Regulations to any Member or Mortgagee upon request and payment of the reasonable cost of such copy.

ARTICLE XIII
Easements

13.1 Easements for Utilities, Etc. Easements for ingress and egress and for the installation, use, maintenance, repair, and replacement of public and/or private utilities including but not limited to sewer, gas, electricity, telephone, TV cable, telecommunications, or water lines for the use of the Units hereinbefore described are hereby created over, under and across the property described on Exhibit "A" as set forth on any plat recorded by Declarant.

There is hereby reserved to Declarant, its successors and assignees, the power to grant reasonable easements upon, across, over and under all of the property for ingress, egress, installation, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewer, telephones, telecommunications and electricity. The Declarant shall, upon written request, grant such easements as may be reasonable necessary for the development of any property reserved by it or annexed as herein provided.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonable interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall by made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier and electric provider easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

Declarant specifically grants to the Townhome Association easements across the properties for ingress and egress for the purpose of maintaining the exterior of the Units and the landscaping around the Units and for any necessary repair or reconstruction as provided in Article VI, Section 6.

13.2 Developmental Easements. Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Properties, for the purpose of completing its work upon the real property described in Exhibit "A" and development of the additional properties if it is brought within the scheme of this Declaration. Further, Declarant reserves the right to continue to use the Properties, and any roadways, walkways, sales offices, model units, signs and parking spaces located on The Properties, in its efforts to market commercial units or lots constructed on the Properties. This paragraph may not be amended without the written

consent of Declarant.

13.3 Encroachments. There shall be reciprocal appurtenant easements of encroachment as between each Unit or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Unit or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an owner or tenant.

13.4 Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter, change, obstruct or rechannel the natural drainage on any Unit whatsoever so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the written consent of the Owner of the affected property.

13.5 Right of Entry. The Townhome Association, or its duly authorized Manager, shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article IV or VI hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules, which right may be exercised by any member of the Board, the Townhome Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Townhome Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

ARTICLE XIV
CERTAIN RIGHTS OF DECLARANT

14.1 Declarant Rights. Notwithstanding any other provisions herein, so long as the Declarant continues to own any of the Units, the following provisions shall be deemed to be in full force and effect:

(a) The Declarant shall have the right at anytime to sell, transfer, lease or relet any Unit(s) which the Declarant continues to own after this Declaration has been recorded, without regard to any restrictions, if any, relating to the sale, transfer, lease or form of lease of Units contained herein and without the consent or approval of the Townhome Association or any other Owner being required.

(b) Without limiting the foregoing, the Declarant shall have the power, but not the obligation, acting alone, at any time (and from time to time) so long as the Declarant owns at least one Unit to: 1)amend the Declaration to cause the same to conform to the requirements of the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, as set forth, respectively, in "FNMA Conventional Home Mortgage Selling Contract Supplement" and

"Seller's Guide Conventional Mortgages", as the same may be amended from time to time; and/or 2)the requirements of the Department of Housing and Urban Development as same may be amended from time to time.

(c) The Declarant shall have the rights (i) to use or grant the use of a portion of the Common Elements for the purpose of aiding in the sale or rental of Units; (ii) to use portions of the Property for parking for prospective purchasers or lessees of Units and such other parties as the Declarant determines; (iii) to erect and display signs, billboards and placards and store and keep the same on the Property; (iv) to distribute audio and visual promotional material upon the Common Elements; and (v) to use any Unit which it owns or leases as a sales and/or rental office, management office or laundry and maintenance facility.

14.2 Maintenance Easement. Declarant reserves for itself and its successors and assigns, and for the Townhome Association, and its officers, agents employees and successors and assigns, an easement to enter on, across, over, in and under any portion of the Properties for the purpose of maintaining the exterior of and the landscaping around the Units.

14.3 Utility Easements. Declarant hereby reserves for itself and its successors and assigns a general easement upon, across, over, in and under the Properties for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems and indoor sprinkler systems. No water, sewer, gas, telephone, electrical, communications, sprinkler systems or other utility or service lines, systems or facilities may be installed or relocated on, under and over the Property unless approved in writing by Declarant. These items may be temporarily installed above ground during construction, if approved by Declarant, subject to the requirements, if any of the County of Charleston or any other authority having jurisdiction over the Properties.

14.4 Drainage and Irrigation Easements. Declarant reserves for itself and its successors and assigns, and for the Townhome Association, and its officers, agents, employees, and successors and assigns, an easement to enter on, across, over, in and under any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself and its successors and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for the maintenance of the Common Elements and for such other purposes as Declarant may from time to time deem appropriate.

14.5 General Provision. Any entity using these general easements provided under this Article XIV shall use its best efforts to install and maintain the easements for utilities, drainage, or irrigation ditches without disturbing the uses of the Owners, the Townhome Association and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible after completion of its work, shall restore the surface to its original condition as soon as possible after completion of its work. Should any entity furnishing a service covered by these general easements request a specific easement by separate recordable document, Declarant shall have, and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, avoid, extinguish, or modify any other recorded easement affecting the

Property.

14.6 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction of Units on the Property and other consideration by Declarant.

14.7 General Reservations. Declarant reserves (a) the right to dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease repair, maintenance, or regulation of parking and/or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners, and/or the Townhome Association.

ARTICLE XV
Mortgagee Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws of the Townhome Association, notwithstanding any other provisions contained therein:

15.1. Notices of Action.

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

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

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

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

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

15.2. Other Provisions for First Lien Holders.

To the extent not inconsistent with South Carolina law and any other provisions of the Governing Documents

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

(b) termination of the Townhome Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders representing more than fifty percent (50%) of the votes of Units subject to Mortgages held by Eligible Holders.

15.3. No Priority.

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.4. Notice to Townhome Association.

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

15.5. Failure of Mortgagee To Respond.

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

15.6. Construction of Article XIV.

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

ARTICLE XVI
Party Walls

16.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units upon the Properties and placed on the dividing line between two or more

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 damages due to negligence or willful acts or omissions shall apply thereto.

16.2 Sharing of Repair and Maintenance. The reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Owners who make use of the wall in proportion to such use.

16.3 Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his or her negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

16.4 Right to Contribution Runs With Land. The right of any Owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

16.5 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the owners under any rule of law regarding liability for negligent or willful acts or omissions.

16.6 Structural Integrity. No Owner, his or her tenant, guest, invitees or contractors shall by their acts or omissions impair or cause to be impaired the structural integrity of any party wall or party fences without prior written consent of all Owners having an interest therein.

ARTICLE XVII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

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

Prior to the Townhome Association or any Owner commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect at the Community or any improvement constructed upon the Property, Declarant shall have the right to meet in good faith and discuss the subject of the proceeding with the Owners, or the particular

Owner, and to access, inspect, correct the condition of, or redesign any portion of the Community, including any improvement as to which a defect is alleged. In addition, the Townhome Association, or the Owner, shall notify the builder who constructed such improvement prior to retaining any other expert witness or for other litigation purposes.

17.2 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Townhome Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Sections 17.3 ("Claims") using the procedures set forth in Section 17.4.

17.3. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Property (other than matters of aesthetic judgment under Article XI, which shall not be subject to review) shall be subject to the provisions of Section 17.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 17.4:

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

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

(c) any suit between Owners, which does not include Declarant or the Townhome Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

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

(e) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 17.4(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 17.4.

17.4. Mandatory Procedures.

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

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

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

(iii) Claimant's proposed remedy; and

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

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

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

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

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

(v) Within five (5) days of the Termination of Mediation, the Claimant shall

make a final written demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants' original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

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

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

17.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 173.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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

17.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 17.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 17.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

ARTICLE XVIII
General Provisions

18.1 Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Townhome Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until September 30, 2027, unless otherwise expressly limited herein, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Properties shall be perpetual, run with the land and shall survive any destruction, reconstruction and relocation of the physical structures, unless said provision is abrogated by the unanimous written consent of all the Unit Owners. Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership. Any amendment must by properly recorded to be effective.

18.2 Amendment by Declarant. Notwithstanding anything contained in this Declaration to the contrary, during the time the Class II Membership exists, Declarant, its successors or assigns, shall have the right to unilaterally amend any provision of this Declaration provided that such amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Unit, as determined in the sole judgment of the Declarant. Each Owner by acceptance of a deed or other conveyance to a Unit, agrees to be bound by such amendments as are permitted by this Section.

18.3 Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Townhome Association, its real and personal assets, including the Common Properties, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Townhome Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Townhome Association. No such disposition of the Townhome Association properties shall be effective to divest or diminish any right or title of any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to the Properties, unless made in accordance with the provisions of this Declaration or said covenants and deeds.

18.4 Indemnification. The Townhome Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own

individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Townhome Association (except to the extent that such officers or directors may also by members of the Townhome Association), and the Townhome Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Townhome Association shall, as a common expense, maintain adequate general liability insurance and officers' and directors' liability insurance to fund this obligation.

18.5 Compliance and Default. In the event of a violation (other than non-payment of an assessment) by an Owner, (the "Defaulting Owner") of the provisions of this Declaration and/or By-Laws as the same may be amended from time to time, the Townhome Association may notify the Defaulting Owner and its Mortgagee, if any, in writing of said violation and if such violation shall continue for a period of ten (10) days from the day notice is mailed to the last known address provided to the Townhome Association by the Defaulting Owner, the Townhome Association shall have the election to (a) fine the Defaulting Owner as the Board of Directors may fix fines for violation for the fiscal year prior to the year the violation occurs; or (b) file an action at law to recover damages on behalf of the Townhome Association and/or remaining owners; or (c) file an action to enforce performance on the part of the Defaulting Owner; or (d) file an action for such relief as may be necessary. If a Court of competent jurisdiction decides in favor of the Townhome Association, the Defaulting Owner shall reimburse the Townhome Association the attorney's fees, court costs, and expenses incurred in bringing the action. If a Court of competent jurisdiction decides in favor of the Defaulting Owner, the Townhome Association shall reimburse the Defaulting Owner the attorney's fees, court costs, and expenses incurred in defending the action

In the event the Townhome Association fails to file an action to cure a default or violation by a Defaulting Owner within thirty (30) days from the date a written request therefor is made to the Townhome Association from any other Owner, then the non-defaulting Owner is hereby authorized to bring action in the manner aforesaid on behalf of the Townhome Association and said non-defaulting Owner shall be entitled to the same remedies and obligations herein provided.

18.6 Delegation of Use. Any owner may delegate, in accordance with the By-Laws of the Townhome Association, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees.

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

18.8 Perpetuities. If any of the covenants, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendents of President George W. Bush.

18.9. Exhibits. Exhibit "A," and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Declaration. Exhibit "C" is

incorporated by this reference and may be amended in accordance with ArticleXII or this Article. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 10th day September, 2007.

D.R. Horton, Inc.

By: _____
R. Doug Brown
Division President

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON) **(S.C. CODE ANN. §30-5-30(B)(C))**

I, the undersigned, a Notary Public for South Carolina, do hereby certify that R. Doug Brown, as Division President of D.R. Horton, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument, as the act and deed of said corporation.

Witness my hand and official seal this 10th day of September, 2007.

_____ (L.S.)
Notary Public in and for S.C.

My Commission Expires: 9-16-13

EXHIBIT "A"
LAND INITIALLY SUBMITTED

All that certain piece, parcel or tract of land situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, being shown and designated as "PARCEL 31A 7.051 acres", on a plat of survey made by Southeastern Surveying of Charleston, Inc., entitled, "A SUBDIVISION PLAT OF PARCELS 31A, 31B, 31C AND 31D PARK WEST, OWNED BY PARK WEST DEVELOPMENT, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA", dated August 16, 2005, and recorded in the RMC Office for Charleston County on September 16, 2005, in Plat Book EJ at Page 223.

SAID piece, parcel or tract of land having such size, shape, dimensions, and boundaries as will by reference to said plat more fully appear.

THIS BEING a the same property conveyed to Declarant herein by deed of Park West Development, Inc. dated February 14, 2006 and recorded in Deed Book Z572 at Page 427.

EXHIBIT "B"
LAND SUBJECT TO ANNEXATION

Any and all real property lying and being within five miles from any boundary of the property described in Exhibit "A.

Initial Rules and Regulations

The following rules, regulations and restrictions shall apply to Mansfield at Park West until such time as they are amended, modified, repealed, or limited pursuant to Article XII of the Declaration.

1. Residential Purposes. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for Declarant to assist in the sale of property described in Exhibits "A" or "B," offices for any property manager retained by the Townhome Association, and business offices for Declarant or the Townhome Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities and Prohibited Conditions. The following activities and/or conditions are prohibited within the Community *unless expressly authorized in writing by the Board*, and then, subject to such conditions as the Board may impose:

(a) Exterior Additions or Alterations. Construction, erection, placement, or modification of any structure or thing, permanently or temporarily, on the outside portion of a Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article XI of the Declaration. This shall include, without limitation, conversion of any carport or garage to finished space for habitable use, modification of any landscaped or grassed areas, removal of trees, signs, basketball hoops, swing sets, and similar sports and play equipment; clotheslines, garbage cans, woodpiles, in-ground swimming pools, docks, piers, and similar structures, hedges, walls, dog runs, animal pens, or fences of any kind. Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Unit with mulch or stone.

(b) Vehicles. Parking any vehicles on streets, thoroughfares or Areas of Common Responsibility (with exception of designated parking areas) and parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other water craft, trailers, snowmobiles, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or Area of Common Responsibility.

(c) Motorized Vehicles. Operation of motorized vehicles with exception of those designed for use by handicapped persons, including, without limitation, any golf carts, electric or gas powered scooters, four-wheelers, go-carts, or similar vehicles, on any walking or jogging trails, sidewalks or other pathways intended for pedestrian traffic.

(d) Animals. Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats (the combined number of

dogs and cats not to exceed three(3)), or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units, shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Owners shall clean up behind any Pet while walking such Pet on any Common Property. Pets shall be registered, licensed, and inoculated as required by law.

(e) Nuisance or Offensive Activities. Any noxious or offensive activity which, in the reasonable determination of the Board, tends to cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other Units or persons using the Area of Common Responsibility or other conditions which tend to disturb the peace of or threaten the safety of the occupants of other Units or persons using the Area of Common Responsibility. Without limiting the generality of the foregoing, any activity which emits foul or obnoxious odors outside the Unit, barking dogs, or the use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units (except alarm devices used exclusively for security purposes) are prohibited.

(f) Illegal Activities. Any activity which violates local, state, or federal laws or regulations.

(g) Unsanitary Activities. Any activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit, including, without limitation, accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers. Such containers shall be either screened from view or kept inside, except as reasonably necessary for garbage pick ups;

(h) Burning. Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(i) Firearms/Fireworks. Discharge of firearms, firecrackers, fireworks or other explosive devices.

(j) Dumping. Dumping grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to minimize runoff, and Declarant and builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Storage. On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and for operation of lawn mowers and similar tools or equipment, and the Townhome Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article XI;

(l) Wildlife. Capturing, trapping, or killing of wildlife within the Community, except in circumstances posing an imminent threat to the safety of persons using the Community.

(m) Environment. Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community.

(n) Drainage. Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm drains, except that Declarant and the Association shall have such right; 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;

(o) Irrigation Systems. Installation of any sprinkler or irrigation systems or wells of any type, other than those initially installed by Declarant or a Declarant approved builder, which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Community, except that Declarant and the Townhome Association shall be permitted and shall have the exclusive right and easement to draw water from such sources within the Community for purposes of irrigation and such other purposes as Declarant or the Townhome Association shall deem desirable;

(p) Bodies of Water. Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within the Community, provided, however, that fishing from the shore shall be permitted with appropriate licenses. The Townhome Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes ponds, streams, or other bodies of water within or adjacent to the Community.

(q) Time-Sharing. Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program.

(r) Business or Trade. Any business, trade or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Community; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Community which is noticeable greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents within the Community, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether; (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Community or its use of any Units which it owns within the Community, including the operation of a timeshare or similar program.

(s) Subdivision of Property. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit, after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Units which it owns.

(t) General. Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community;

(u) Unsightly Structures. Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair;

(v) Exterior Antennas. Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; and (iii) antennas designed to receive television broadcast signals (i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted; however, any such Permitted Device must be placed in the least conspicuous location on the Unit at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property, or is screened from the view of adjacent Units in a manner consistent with the Community-Wide Standard and the Architectural Guidelines. Notwithstanding anything contained herein to the contrary, Declarant and the Townhome Association shall have the right, without obligation, to erect or install and maintain satellite dishes, antennas, or similar devices for the benefit of all or a portion of the Community

(w) Exterior Decorative Items. Installation, display, or presence of exterior decorative items, including, but not limited to, statuary, wishing balls and fountains, but not including flags.

3. Leasing of Units. "Leasing," for purpose of this Paragraph, is defined as regular exclusive occupancy of a Unit by any person, other than the Owner, for which the

Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term; however, in no case shall such term be shorter than twelve months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Governing Document.

EXHIBIT "D"

BK P 638PG453

BYLAWS

OF

MANSFIELD AT PARK WEST, INC.

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BYLAWS

OF

MANSFIELD AT PARK WEST, INC.

A South Carolina Nonprofit Mutual Benefit Corporation

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act, the Board of Directors of Mansfield at Park West, Inc., a South Carolina nonprofit mutual benefit corporation, has or intends to adopt the following Bylaws for such corporation.

Article I
Name, Principal Office, and Definitions

1.1 Name.

The name of the corporation is Mansfield at Park West, Inc. ("Association").

1.2 Principal Office.

The Association's principal office shall be located in Charleston County, South Carolina. The Association may have such other offices, either within or outside the State of South Carolina, as the Board of Directors may determine or as the Association's affairs require.

1.3 Definitions.

The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West filed in the Office of Register of Mesne Conveyances for Charleston County, South Carolina, as it may be supplemented and amended ("Declaration"), unless the context indicates otherwise.

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1 Members.

Each Owner of a Unit (as defined in the Declaration) shall be a Member of the Association. The Association shall have two classes of membership as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference subject to such terms and conditions as set forth in the Declaration and these Bylaws.

2.2 Notice of Ownership.

In order to confirm Membership, upon purchasing a Unit in Mansfield at Park West, the Owner of such Unit shall promptly furnish to the Association a legible copy of the instrument conveying ownership to the Owner, which copy shall be maintained in the records of the Association.

2.3 Place of Meetings.

Association meetings shall be held at the Association's principal office or at such other suitable place convenient to the Members as the Board may designate.

2.4 Annual Meetings.

The first Association meeting, whether a regular or special meeting, shall be held not later than sixty (60) days after the Class II Membership shall cease to exist and be converted to a Class I Membership as set for the Declaration, unless otherwise set by the Declarant. Meetings shall be of the Members. Subsequent regular annual meetings shall be held each year at a time set by the Board.

2.5 Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least twenty-five percent (25%) of the voting interest of the Members. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

2.6 Notice of Meetings.

It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Unit (as shown in the records of the Association) a notice of each annual or special meeting of the Association stating the time and place where it is to be held and in the notice of a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than the Unit, the Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices for annual and special meetings shall be served at least thirty (30) days but not more than sixty (60) days in advance of such meeting.

If mailed, the notice of a meeting shall be deemed to be delivered upon the earliest of: (a) the date received; (b) five (5) days after its deposit in the United States mail, as evidenced by its postmark, if mailed with first class postage affixed; (c) the date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and signed by or on behalf of the addressee; or (d) thirty (30) days after its deposit in the United States mail, as evidenced by the postmark, if mailed with other than first class, registered, or certified postage affixed.

2.7 Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.8 Adjournment of Meetings.

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At any such adjourned meeting, the necessary quorum shall be eighty (80%) percent of the Members who were present either in person or by proxy at the original meeting, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.9 Voting.

The Declaration shall set forth the Member's voting rights; such voting rights provisions are specifically incorporated by this reference.

2.10 Authority of Person Voting.

The Board shall have the authority to determine, in its sole discretion, whether any person claiming to have authority to vote on behalf of or as a Member has such authority. If the Member is a corporation, partnership, limited liability company, trust, or similar entity, the Association may require the person purporting to vote on behalf of such Member to provide reasonable evidence that such person (the "Representative") has authority to vote for such Member. Unless the authority of the Representative is challenged in writing at or before the time of voting, or is challenged orally at the time of voting, the Association may accept such Representative as a person authorized to vote for such Member, regardless of whether evidence of such authority is provided.

2.11 Proxies.

At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Unit, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

2.12 Majority.

As used in these Bylaws, the term "majority" shall mean those votes of the Members, or other group as the context may indicate, totaling more than fifty percent (50%) of the votes of Members at a meeting at which a quorum is present.

2.13 Quorum

At all meetings of Members, regular or special, the presence, in person or by proxy, of at least ten percent (10%) of the total eligible vote of the Association shall constitute a quorum. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. Any amendment to this Section shall comply with the provisions of Section 33-31-1023 of the South Carolina Nonprofit Corporation Act.

2.14 Conduct of Meetings.

The President shall preside over all Association meetings, and the Secretary shall keep the minutes of the meetings and record in the minute book all resolutions adopted and all other transactions occurring at such meetings. Further, Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation, the Declaration, these By-Laws or the statutes of the State of South Carolina.

2.15 Action Without a Meeting.

Any action to be taken at a meeting of the Members, or which may be taken at a meeting of the Members, may be taken without a meeting if written consents setting forth the action so taken are signed by Members holding at least eighty percent (80%) of the Association's voting power. Action taken without a meeting shall be effective on the date that the last consent is executed or, if required, the date Declarant consents to the action unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of the meetings of the Members filed in the permanent records of the Association.

Article III
Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1 Governing Body; Composition.

The business and affairs of the Association shall be governed by a Board of Directors. Each director shall have one equal vote. Except with respect to directors appointed by Declarant during the Declarant Control Period, the directors shall be Members or residents of the

Community; provided, however, that no two persons, being either Owners or residents, of any one Unit may serve on the Board at the same time. A "resident" shall be any person eighteen (18) years of age or older whose principal residence is a Unit within the Community. In the case of a Member which is not an individual, any officer, director, partner, member or manager of a limited liability company, or trust officer of such Member shall be eligible to serve as a director unless a written notice to the Association signed by such Member specifies otherwise; however, no Member may have more than one such representative on the Board at the time, except in the case of directors appointed by Declarant.

3.2 Number of Directors

The initial Board shall consist of three (3) directors designated in the Articles of Incorporation. Thereafter, the Board shall consist of three (3) to seven (7) directors, as provided in Section 3.4 below.

3.3 Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to directors appointed by Declarant during the existence of the Class II Membership, nominations for election to the Board shall be made by a "Nominating Committee." The Nominating Committee shall consist of a Chairman, who shall be a Board member, and three (3) or more Members or representatives of Members. The Board shall appoint the Nominating Committee not less than thirty (30) days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election. The Nominating Committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but in no event less than the number of positions to be filled as provided in Section 3.4 below. Nominations shall also be permitted from the floor. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

3.4 Election and Term of Office.

(a) During Existence of Class II Membership. The Declarant shall have the sole and exclusive right to appoint and to remove the directors of the Association until the first to occur of the following:

(i) one hundred twenty (120) days from when ninety percent (90%) of the Units permitted for development within the Property have certificates of occupancy issued thereon and have been conveyed to Persons other than a successor Declarant;

(ii) twenty (20) years after this Declaration is Recorded; or

(iii) Upon Declarant's surrender in writing of the authority to appoint and remove directors and officers of the Association.

Notwithstanding its right to appoint and remove officers and directors of the Association, Declarant reserves the right to approve or disapprove specified actions of the Association as provided in Section 3.18 herein.

(b) Subsequent to the Existence of Class II Membership. Upon termination of the Class II Membership, directors shall be elected by the Members and hold office as follows:

(i) The Association shall call a special meeting to be held at which Members shall elect three (3) directors to serve until the next annual meeting of the Members. At the next annual meeting of the Members following termination of Class II Membership, the Members shall elect two (2) directors for an initial term of two (2) years and one (1) director for an initial term of one (1) year. At the expiration of the initial term of office of each director, a successor shall be elected to serve for a term of two (2) years. The directors shall hold office until their respective successors shall have been elected by the Association.

(ii) Thereafter, directors shall be elected at the Association's annual meeting. Each Member may cast the entire vote assigned to his Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

(iii) After the Class II Membership terminates, upon the affirmative vote of sixty-seven (67%) percent of the Members, the number of directors may be expanded to any odd number up to and including seven (7) directors. In the event the Members vote to expand the Board, the additional directors shall each serve a term of two (2) years on a staggered basis such that in one year three (3) directors would be elected for a term of two (2) years, and the following year either two (2) or four (4) directors would be elected for a term of two (2) years each, depending on total number of directors.

3.5 Removal of Directors and Vacancies.

At any regular or special meeting of the Association duly called, any one or more directors may be removed, with or without cause, by a vote of a majority of the Members and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Members shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who had three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors at a meeting.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by Declarant. Declarant shall be entitled to appoint or remove Directors at any time during the Declarant Control Period. Thereafter, Declarant may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director it has appointed.

B. Meetings.

3.6 Annual Meetings.

The Board shall hold an annual meeting within ten (10) days following each annual meeting of the Members at such time and place the Board shall fix.

3.7 Regular Meetings.

The Board may hold regular meetings at such time and place a majority of the directors shall determine, but the Board shall hold at least four (4) such meetings during each fiscal year with at least one per quarter. The Board shall give notice of the time and place of a regular meeting to directors not less than six (6) days prior to the meeting; provided, the Board need not give notice of a meeting to any director who has signed a waiver of notice or a written consent to holding the meeting.

3.8 Special Meetings.

The Board may hold special meetings when called by written notice signed by the President, the Vice President, or any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least six (6) business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be delivered or communicated at least seventy-two (72) hours before the time set for the meeting. Notices of such meetings shall also be delivered to the Members contemporaneously with the directors' notices.

3.9 Waiver of Notice.

The transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present; and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10 Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence at such meeting.

3.11 Quorum of Board of Directors.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless the Bylaws or the Declaration specifically provide otherwise. A meeting at which a quorum is present initially may continue to transact business notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact without further notice any business which it might have transacted at the original meeting. Any amendments to this Section shall comply with the provisions of the Section 33-31-1024 of the South Carolina Nonprofit Corporation Act.

3.12 Compensation.

Directors shall not receive any compensation from the Association for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director makes his or her interest known to the Board prior to entering into such contract and a majority of the Board, excluding the interested director, approves such contract.

3.13 Conduct of Meetings.

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 Open Meetings.

Subject to the provisions of Section 3.15, all Board meetings shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests permission for that person to speak. In such case, the President may limit the time such person may speak. Notwithstanding the above, the President may adjourn any

Board meeting and reconvene in executive session, and may exclude persons other than directors. Only the following matters are open for discussion in executive session:

(a) matters pertaining to Association employees or involving the employment, promotion, discipline, or dismissal of an officer, agent or employee of the Association;

(b) consultation with legal counsel regarding disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) investigative proceedings concerning possible or actual criminal conduct;

(d) matters subject to specific constitutional, statutory; or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and

(e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

3.15 Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors, or any action that may be taken at a meeting of the directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.16 Powers.

The Board shall have all of the powers and duties necessary for managing the business and affairs of the Association and for performing all responsibilities and exercising all of the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things not limited by the Governing Documents or South Carolina law to be done and exercised exclusively by the Members.

3.17 Duties.

The Board's duties shall include, without limitation:

(a) causing to be prepared and adopting, in accordance with the Declaration, an annual budget establishing each Member's share of the Common Expenses and any Neighborhood Expenses;

(b) levying and collecting such assessments from the Members;

(c) providing for the operation, care, upkeep, and maintenance of the Area of

Common Responsibility and entering into agreements with adjacent property owners to allocate maintenance responsibilities and costs of certain public rights-of-way and other property within or adjacent to the Community;

(d) designating, hiring, and dismissing the personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' business judgment, in depositories other than banks;

(f) making and amending Rules and Regulations in accordance with the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in Section 8.5 of the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(o) indemnifying an Association director, officer , or committee member, or former Association director, officer, or committee member to the extent such indemnity is required by South Carolina law, the Articles of Incorporation, or the Declaration; and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

3.18 Right of Declarant to Disapprove Actions.

During Declarant Annexation Period as set forth in the Declaration, Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in Declarant's sole judgment, would tend to impair rights of Declarant or any builders approved by Declarant under the Declaration or these Bylaws, interfere with the development or construction of any portion of the Community, or diminish the level of services the Association provides.

(a) The Association shall give Declarant 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 it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.7, 3.8, 3.9, and 3.10 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 said meeting; and

(b) The Association shall give Declarant the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproved 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 shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. Declarant, acting through any officer, 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. 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 the Board, the Association, or any committee. 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 repair or any expenditure required to comply with applicable laws and regulations.

3.19 Management.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. Declarant or an affiliate of Declarant may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.20 Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) the Association's cash accounts shall not be commingled with any other accounts;

(d) the managing agent shall accept no remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, services fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) the managing agent shall disclose to the Board promptly any financial or other interest which the managing agent may have in any firm providing goods or services to the Association;

(f) an annual report consisting of at least the following shall be made available to all Members within one-hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; however, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Declarant Control Period, the annual report shall include certified financial statement.

3.21 Borrowing.

The Association shall have the power to borrow money for any legal purpose; however, the Board shall obtain Member approval in the same manner provided in Section 9.2 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed twenty percent (20%) of the Association's budgeted gross expenses for that fiscal year. No Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least eighty percent (80%) of the total vote in the Association.

3.22 Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with residential or nonresidential owners' associations within the outside the Community; however, any common management agreement shall require the Board's consent.

3.23 Enforcement.

In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Governing Documents. In addition, the Board may suspend any services the Association provides to an Owner or an Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the Association shall first assess the fine against the occupant, tenant, employee, guest, or invitee; however, if the occupant does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Association. The Board's failure to enforce any provision of the Governing Documents shall not be deemed a waiver of the Board's right to do so thereafter.

(a) Notice. Prior to imposition of certain sanctions requiring notice under the Declaration, the Board, or its delegate, shall serve the alleged violator with written notice describing (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; however, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self help (specifically including, but not limited to, towing vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIII of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessary compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or Person responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes or exercising this power of self help shall not be deemed as trespass.

3.24 Board Standards.

While conducting the Association's business affairs, the Board shall be protected by the business judgment rule. The business judgment rule protects a director appointed by Declarant from personal liability so long as the director: (i) serves in a manner the director believes to be in the best interests of the Association and the Members; or (ii) serves in good faith. The business judgment rule protects a director not appointed by Declarant from liability for actions taken or omissions made in the performance of such director's duties, except for liability for wanton and willful acts or omissions.

In fulfilling its governance responsibilities, the Board's actions shall be governed and tested by the rule of reasonableness. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

The burden of proof in any challenge to an action or inaction by a director shall be on the party asserting liability.

The operational standards of the Board and any committee the Board appoints shall be the requirements set forth in the Governing Documents or the minimum standards which Declarant, the Board, and the Architectural Review Committee may establish. Such standard shall, in all cases, meet or exceed the standards set by Declarant and the Board during the Declarant Control Period. Operational standards may evolve as the needs and demands of the Community change.

3.25 Board Training Seminar.

Each director is encouraged to complete a board training seminar within such director's first six months of directorship. Such seminar shall educate the directors about their responsibilities and duties. The seminar may be in live, video or audio tape, or other format.

Article IV
Officers

4.1 Officers.

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two (2) or more offices, except the offices of the President and Secretary. Moreover, the Secretary shall be responsible for preparing minutes of all directors' and Members' meetings and for authenticating records of the corporation.

4.2 Election and Term of Office.

The Board shall elect the officers of the Association at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Association's interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Secretary shall prepare, execute, certify, and Record amendments to the Declaration as provided in Section 16.3 of the Declaration. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

4.5 Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at

any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks and other Association instruments shall be executed by at least two (2) officers or by such other person or persons as a Board resolution may designate.

4.7 Compensation.

Officers' compensation shall be subject to the same limitations as directors' compensation under Section 3.12.

Article V
Committees

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate be resolution. Each committee shall operate in accordance with the terms of such resolution.

Article VI
Miscellaneous

6.1 Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order (the then current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law or the Governing Documents.

6.3 Conflicts.

If there are conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any

Member, or the duly appointed representative of any of the foregoing, at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, Bylaws, and Articles of Incorporation, including any amendments, any Supplemental Declarations, the Rules and Regulations, the membership register, books of account, and the minutes of meetings of the Members, the Board and committees. The Board shall provide for such inspection to take place at the Association's office or at such at other place within the Community as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right, at any reasonable time, to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

6.5 Notices.

Unless the Declaration or these Bylaws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendments.

(a) By Declarant. During the Declarant Control Period, Declarant unilaterally may amend these Bylaws for any purpose. Thereafter, Declarant or the Board unilaterally may amend these Bylaws at any time, and from time to time, if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender,

purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; provided, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing greater than fifty percent (50%) of the total vote in the Association, and the consent of Declarant, so long as Declarant during Declarant Annexation Period. In addition, the approval requirements set forth in Article XVII of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) FHA/VA Approval of Amendments. The U.S. Department of Veterans Affairs (if it is guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such Mortgages) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such Mortgages) shall have the right to veto amendments to these Bylaws during the Declarant Control Period.

(d) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon Recordation, unless the amendment specifies a later effective date. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. The Secretary shall prepare, execute, certify, and Record amendments to these Bylaws.

No amendment may remove, revoke, or modify any of Declarant's rights or privileges without its written consent during the Declarant Annexation Period.

SIGNATURE PAGE TO FOLLOW

BK P 638PG474

Certification

I, undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Mansfield at Park West, Inc., a South Carolina Non Profit Corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 10th day of September. 2007.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 10th day of September, 2007

[SEAL]
Herbert P. French
Secretary

BK P 638PG475

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

WILLCOX, BUYCK, & WILLIAMS
1991 GLENN'S BAY ROAD
SURFSIDE BEACH SC 29575

Number of Pages:
67

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September 13, 2007

11:37:49 AM

BK P 638PG409

Charlie Lybrand, Register
Charleston County, SC

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DECLAR/COV/ETC	$ 72.00
Postage	$ 2.00
TOTAL	$ 74.00

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West are recorded in the office of the Charleston County Register of Deeds in Book P638 Page 409; and

WHEREAS, these Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West have been previously amended and the First Amended is recorded in the office of the Charleston County Register of Deeds in Book 0032 Page 997; and

WHEREAS, in excess of Seventy-Five Percent (75%) of the members of the Association have voted to amend the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West as set forth herein; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West are amended as follows:

AMENDMENTS

1. The following language shall be added and inserted in Section 5.1 entitled "**Townhome Association's Responsibility**":

> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof. Any and all funds recovered and received by the Association after expenses of the claim shall be placed in a separate interest-bearing account and used for the sole purpose of making repairs to the townhome exteriors and exterior building components. Any such repairs made with these collected funds shall be prioritized and made at the sole discretion of the Association.

2. Article XVII entitled "**Dispute Resolution and Limitation on Litigation**" and all of its subsections to include 17.1, 17.2, 17.3, 17.4, 17.5, and 17.6 shall be deleted in its entirety and in its place shall be inserted:

ARTICLE XVII
Dispute Resolution

Any dispute between the Association and the Declarant shall be submitted to binding

arbitration with a single arbitrator agreed to by the parties or appointed by the Court. The arbitrator shall have the sole discretion to determine the rules and procedures of the arbitration and any law applicable thereto. The award of the arbitrator shall be final and binding.

To the extent that there is any provision in the Declarations that conflict with this Amendment, the terms of this Amendment shall govern. The Board of the Association shall have the right to give the final meaning and interpretation of any term of the Declaration and Amendments thereto and shall have the right to modify any provision for which it determines impedes it from fulfilling its duties and obligations to the members of the Association provided that at least two-thirds (2/3) of the Board votes in favor of such interpretation and/or modification.

IN WITNESS WHEREOF, Mansfield at Park West Inc. (the Townhome Association) by its President, has executed this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West this 1 of ~~February~~ March 2021.

MANSFIELD AT PARK WEST, INC.

Signature of 1st Witness

By: _____
Mike Frappier, Its President

Signature of 2nd Witness

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, John T Chumbris (Notary Public), do hereby certify that Mansfield at Park West, Inc., by Mike Frappier, its President personally appeared before me this day and acknowledged that due execution of the foregoing instrument.

Witness my hand and seal this the 1 day of ~~February~~ March 2021.

Notary Public for South Carolina
My commission expires: 3/28/26

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

CHAKERIS LAW FIRM

231 CALHOUN ST.
CHARLESTON SC 29401

RECORDED

Date: March 9, 2021
Time: 2:38:20 PM

Book	Page	DocType
0968	950	Amend/Misc

Michael Miller, Register
Charleston County, SC

MAKER:
MANSFIELD @ PARK WEST

RECIPIENT:
NA

Original Book: P638

Original Page: 409

# of Sats:

Note:

# of Pages: 3
# of References:

Recording Fee	$ 25.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
TOTAL	$ 25.00

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P638 — Original Book
409 — Original Page
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14:38:20 — Recorded Time

STATE OF SOUTH CAROLINA	)	IN THE ARBITRATION OF
	)	
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
	)	
MANSFIELD AT PARK WEST, INC.,	)	
	)	**DEFENDANT D.R. HORTON INC.'S**
	)	**REPLY BRIEF IN SUPPORT OF ITS**
PLAINTIFF,	)	**MOTION FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
D.R. HORTON, INC.,	)	
	)	
DEFENDANT.	)	
	)	

Defendant D.R. Horton, Inc. ("D.R. Horton") hereby submits this Reply Brief in Support of its Motion for Summary Judgment showing as follows:

A. Real Party In Interest

Plaintiff contends that it is the real party in interest as a result of the Second Amendment to the CCRs and argues that D.R. Horton has no standing to challenge the Second Amendment. Essentially, Plaintiff believes that it can unilaterally amend the original CCRs, which gave certain rights to D.R. Horton, remove those rights, seek to enforce the terms of the Second Amendment against D.R. Horton, and D.R. Horton is unable to contest the amendment. This position is completely contradictory from the terms of the CCRs. Further, the caselaw cited to by Plaintiff is inapplicable as D.R. Horton does not seek to amend the CCRs.[1]

First, the original CCRs provide that an agreement to change the covenants and restrictions in whole or in part will **not** be effective "unless made and recorded three (3) years in advance of

[1] Plaintiff's reliance on Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006) is misplaced as it concerns the requirements for a developer to amend the restrictive covenants. D.R. Horton is not seeking to amend the CCRs. Instead, it is D.R. Horton's position that the Second Amendment is not effective until the time prescribed in the CCRs – 3 years after the filing of the amendment.

the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken." Exhibit C, CCRs, § 18.1.[2] On March 1, 2021, the homeowners attempted to amend the CCRs and assign the right to bring this lawsuit to Plaintiff. *See* Exhibit D. The Second Amendment was filed by counsel for Plaintiff on March 9, 2021. This lawsuit was filed three days later on March 12, 2021. Based on the clear language of the amendment provisions of the original CCRs, the earliest that the Second Amendment could be effective would be March 9, 2024, three years after the amendment was filed. Therefore, the attempted assignment by the homeowners to Plaintiff is ineffective at this time, and the rights and obligations related to the exteriors of the townhomes remain with the homeowners.

Second, Plaintiff's argument that D.R. Horton lacks standing to challenge the Second Amendment is contradicted by the terms of the CCRs. In fact, the CCRs explicitly gave D.R. Horton, the Declarant, rights in the CCRs and any amendments thereto. The CCRs provide: "This Declaration, ***as it may be amendment and supplemented from time to time***, shall remain in effect and ***shall be enforceable by the Declarant***, the Townhome Association, [and] any Owner . . . for a term of Twenty (20) years from the date this Declaration is Recorded." Exhibit C, CCRs, § 1.2 (emphasis added). The original CCRs were filed on September 13, 2007. Therefore, by the express terms of the CCRs, D.R. Horton has the right to enforce the CCRs and its amendments or supplements until 2027.

In addition, Plaintiff's position is illogical. Other than attempting to assign the right to bring this action from the homeowners to Plaintiff, the Second Amendment also removed the entire

[2] Unless otherwise noted, all references to exhibits refer to the exhibits to D.R. Horton's Memorandum in Support of Defendant's Motion for Summary Judgment.

section entitled "**Dispute Resolution and Limitation on Litigation**" (the "Original Dispute Resolution Provision"). The Original Dispute Resolution Provision provided procedures that any of the bound parties had to follow in order to bring a claim related to an alleged construction defect. *See* Exhibit C, CCRs, § 17.1-17.6. The Original Dispute Resolution Provision provided that "[D.R. Horton] shall have the right to meet in good faith and discuss the subject of the proceeding with the Owners, or the particular Owner, and to access, inspect, correct the condition of, or redesign any portion of the Community, including any improvement as to which a defect is alleged." Id., § 17.1. Moreover, the Original Dispute Resolution Provision provided the following procedure for bringing construction defect claims:

- notice of claim in writing;
- the parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation;
- if such meeting is unsuccessful, then the claimant must submit the claim to mediation; and
- if the mediation is unsuccessful, then the claimant must submit the claim to arbitration.

CCRs, § 17.4.

In place of the Original Dispute Resolution Provision, the Second Amendment inserted the following:

ARTICLE XVII
Dispute Resolution

> Any dispute between the Association and the Declarant shall be submitted to binding arbitration with a single arbitrator agreed to by the parties or appointed by the Court. The arbitrator shall have the sole discretion to determine the rules and procedures of the

> arbitration and any law applicable thereto. The award of the arbitrator shall be final and binding.
>
> To the extent that there is any provision in the Declarations that conflict with this Amendment, the terms of this Amendment shall govern. The Board of the Association shall have the right to give the final meaning and interpretation of any term of the Declaration and Amendments thereto and shall have the right to modify any provision for which it determines impedes it from fulfilling its duties and obligations to the members of the Association provided that a least two-thirds (2/3) of the Board votes in favor of such interpretation and/or modification.

(the "Amended Dispute Resolution Provision"). Exhibit D. Based on the Second Amendment, Plaintiff contends that it does not have to comply with the requirements laid out in the Original Dispute Resolution Provision. The CCRs expressly state that D.R. Horton has the right to enforce the CCRs and any amendments or supplements until 2027. *See* CCRs, § 1.2. Even if the CCRs did not expressly provide D.R. Horton with standing to contest the CCRs and any amendments, the Second Amendment removed certain rights provided to D.R. Horton in the Original Dispute Resolution Provision, and D.R. Horton must be provided the ability to contest the effectiveness of the Second Amendment.

Based on the foregoing, the homeowners are the real party in interest. Moreover, Plaintiff agrees that the Second Amendment did not change the homeowners' obligation to repair and maintain the exterior, roof and fencing. (30(b)(6) Depo. of Plaintiff, 23:15-24:5, 25:22-26:10, 27:11-17, 52:9-53:1, 60:18-22, 61:3-8, 76:5-9).[3] Despite this, Plaintiff has not asked homeowners what repairs, modifications, or maintenance has been done to the exteriors, roofs, or fences since

[3] Excerpts of the Plaintiff's 30(b)(6) Deposition Transcript cited to in support of its motion are attached hereto as **Exhibit A**.

they were purchased from D.R. Horton. (30(b)(6) Depo. of Plaintiff, 52:13-17; 53:2-25).[4] D.R. Horton is entitled to this information and has filed a Motion to Compel seeking these documents.

B. Statute Of Repose

1. Plaintiff's Gross Negligence Allegations Do Not Save Plaintiff's Other Claims That Are Barred By The Statute Of Repose

Plaintiff argues that "simply raising the Statue of Repose does not automatically wipe out all causes of action; rather, Defendants are not entitled to the Statute of Repose defense if they are guilty of fraud, gross negligence, or recklessness." Plaintiff's Brief in Opposition, p. 4. It appears Plaintiff's position is that if Defendant is guilty of gross negligence, then none of Plaintiff's claims would be barred. However, this position has been rejected by South Carolina courts and the District Court of South Carolina. *See* Overlook Horizontal Property Regime Homeowner's Assoc., Inc., et al. v. Trehel Corporation, et al., Court of Common Pleas of Anderson County, Civil Action No. 2018-CP-04-01787, Pier View Condo. Ass'n v. Johns Manville, Inc., 2022 U.S. Dist. LEXIS 38602, Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, 2018 U.S. Dist. LEXIS 17795.

Judge Sprouse's well-reasoned order granting summary judgment in Overlook Horizontal Property Regime is particularly instructive. A copy of the Overlook Horizontal Property Regime order dated October 20, 2021, is attached hereto as Exhibit C. In Overlook Horizontal Property Regime, Judge Sprouse "reject[ed] Plaintiffs' argument that the statute of repose is not available as a defense if a defendant committed gross negligence, because this interpretation contradicts the plain language of the statute and defeats the S.C. General Assembly's clear intent to allow a defendant the substantive right to be free from liability after a certain period of time." Id. at 6-7.

[4] It is worth nothing that an inspection of the property revealed evidence that the roof of at least one of the townhomes has been replaced. *See* **Exhibit B**.

The court further held that "[t]he unambiguous language of Section 15-3-640 evinces the S.C. General Assembly's intent not to allow causes of action for simple negligence, breach of contract, or breach of warranty to be asserted outside of the statute of repose, regardless of whether plaintiff also pleads or can prove a gross negligence claim." Id. at 7.

Similarly, in the Pier View Condo case, the plaintiff argued that because its gross negligence claim survived summary judgment, all of plaintiff's claims should have been permitted to trial. As explained by the court,

> In other words, [plaintiff] contends that the applicable exception to the statute of repose is "defendant-specific" rather than "claim-specific." The argument puts the proverbial cart before the horse by unilaterally validating an as-yet-unadjudicated claim of gross negligence as a basis to present routine application of the statute of repose to claims that would not otherwise be excepted.

Id. at *5. The court relied on the decision in Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, Inc., No. CV 9:17-1575-RMG, 2018 U.S. Dist. LEXIS 17795, 2018 WL 679454, at *3 (D.S.C. Feb. 2, 2018).

> In Hampton Hall, Judge Gergel held that the plaintiff's construction defect claim premised on simple negligence was barred by the statute of repose, but the plaintiff's gross negligence claim survived summary judgment. Judge Gergel agreed with the plaintiff's interpretation of the statute of repose insofar as the negligence claim would be excepted if the defendants were merely negligent, not grossly negligent, and concealed that negligence from the plaintiff. However, he found that the facts of the case did not support the assertion that the defendants concealed the construction defects in question. The undersigned agrees with this analysis of the statute of repose on a ***claim-specific*** basis given that the statute is made unavailable as a defense to a party "***guilty*** of fraud, gross negligence, or recklessness" in furnishing materials, or to a party who "conceals any ***such cause of action***." S.C. Code § 15-3-670(A) (emphasis added). Thus, gross negligence, recklessness, or material concealment must be proven, not simply alleged, to avoid application of the statute of repose, and the proof must be as to those specific theories of liability, not as to negligence generally.

Id. at *6-7 (emphasis in original) (citations omitted).

In the present case, Plaintiff does not argue that D.R. Horton concealed the negligence and other claims barred by the Statute of Repose. Therefore, Plaintiff's claims except for the gross negligence claim are clearly barred by the Statute of Repose. Further, as explained in D.R. Horton's initial Memorandum in Support of Motion for Summary Judgment, Plaintiff has failed to submit sufficient evidence for its gross negligence claim to survive summary judgment.[5]

2. The Progressive Damage Exception Set Forth In Section 15-3-670(C) Is Not Applicable

Plaintiff asserts that the exception to the Statute of Repose contained in Section 15-3-670(C) also applies. However, Plaintiff submits no evidence in support of this position. Subsection (C) provides as follows:

> The limitation provided by Section 15-3-640 may not be asserted as a defense to an action for … property damage which is:
>
> (1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; ***and***
>
> (2) the result of … exposure to some ***toxic or harmful or injury producing substance***, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma."

S.C. Code § 15-3-670(C) (emphasis added). Again, the analysis contained in the Overlook Horizontal Property Regime order is persuasive. As explained by Judge Sprouse,

> Both requirements of Section 15-3-670(C) must be satisfied for the exception to apply, and Plaintiffs have not done so in this case. Plaintiffs focus on the exception's first requirement of discoverability, ignoring the plain meaning of the second requirement concerning toxicity or harmfulness. Requirement (2) is not met, because there is no evidence in the record that Plaintiffs' property damage occurred from exposure to a substance that is toxic or to harmful particles over time. Instead, Plaintiffs allege that their property has been damaged by water intrusion. ***Almost every construction case involves claims of water intrusion; therefore, a***

[5] Excerpts of R. Mease's Deposition Transcript D.R. Horton cited to in support of its motion are attached hereto as **Exhibit D**.

> ***ruling by this court that water constitutes a harmful substance barring application of the Statute of Repose would render the Statute of Repose effectively meaningless, vitiating legislative intent***. Water which causes property damage cannot rationally be deemed to be a 'toxic or harmful or injury producing' substance, element, or particle to which Section 15-3-670(C)'s exception applies. Clearly, the substances included in the exception would be radiation, toxic chemicals, asbestos or similar items.

Id. at 7-8 (emphasis added).

Here, Plaintiff has alleged that the property has been damaged by water intrusion. Plaintiff has pointed to no other "toxic or harmful or injury producing substance." Therefore, the second requirement for the progressive/latent damage exception provided in Section 15-3-670(C) has not been met, and the exception does not apply.

C. Acceptance Of Defects By New Owners

Plaintiff contends that the right and obligation to bring a claim for faulty construction for the building exteriors is the responsibility of the Plaintiff pursuant to the Second Amendment, and D.R. Horton's arguments relating to the acceptance of defects by new owners fails. However, as outlined above, pursuant to the amendment provisions of the CCRs, the Second Amendment is not effective until at least March 9, 2024, three years after it was filed. Because the Second Amendment is currently ineffective, the homeowners are the real party in interest, as outlined above.

D. Breach of Fiduciary Duty

The cases cited to by Plaintiff are not applicable as they concern a developer's alleged fiduciary duties concerning common areas or amenities. *See* Goddard v. Fairways Dev. Gen. P'ship, 310 SC 408 (Ct. App. 1993) ("On remand, the trial court should be certain that any liability imposed upon the developer is limited to the costs that would have been required in 1987 to bring the common areas up to standard"); Concerned Dunes W. Residents v. Georgia-Pacific Corp., 349

SC 251 (2002) ("a developer has a fiduciary duty to the POA to transfer common areas that are in good repair … the developer who breaches this duty, by transferring common areas that are not in reasonably good repair and without the funds necessary to bring the common areas up to standard, is liable to the POA for all damages proximately flowing from the breach, including damages for the continued deterioration of those areas"); Walbeck v. I'on Co., LLC, 426 SC 494 (Ct. App. 2018) (concerning whether the developer owed a fiduciary duty convey certain amenities – a community dock and a park – to the HOA).

The Complaint contained allegations concerning common areas in the development. *See*, *e.g.*, Complaint, ¶ ¶ 10, 11, 13. However, Plaintiff's expert, Mr. Mease, did not evaluate the clubhouse. (R. Mease Depo., 54:11-19). Mr. Mease has opined that there are construction deficiencies with the roofing, siding, fences and windows of the townhome units. (R. Mease Depo., 43:8-14). Despite the Second Amendment's attempt to transfer the right and obligation to pursue claims for faulty design and construction of the exteriors of the townhome units, Plaintiff admits that is still the homeowner's obligation to maintain and repair the exterior, roof, and fencing. (30(b)(6) Depo. of Plaintiff, 23:15-24:5, 25:22-26:10, 27:11-17, 52:9-53:1, 60:18-22, 61:3-8, 76:5-9). Plaintiff is not responsible for the repair and maintenance of these portions of the properties. (30(b)(6) Depo. of Plaintiff, 27:11-17). The corporate representative for Plaintiff testified that he was not aware of the HOA providing maintenance or repairs for the exteriors of the units. (30(b)(6) Depo. of Plaintiff, 24:6-16). Moreover, the CCRs specifically define "Common Area" or "Common Properties" as "all real and personal property now or hereafter owned by the Townhome Association for the common use and enjoyment of the Owners." Exhibit C, CCRs, § 2.4. It is undisputed that even if the Second Amendment were effective, it did not change the ownership of the exteriors, roof and fencing of the townhomes from the individual homeowner to the Plaintiff.

Therefore, there are no "Common Areas", or "Common Properties" as defined by the CCRs that Plaintiff can claim were improperly turned over.

Because there was no applicable fiduciary duty owed to Plaintiff, D.R. Horton is entitled to summary judgment.

WHEREFORE, Defendant D.R. Horton, Inc. shall, and hereby does, move the Arbitrator for an Order granting summary judgment in favor of Defendant D.R. Horton.

KENISON, DUDLEY, & CRAWFORD, LLC

s/ Jason M. Imhoff
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September 22, 2022

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON C.A. NO. 2021-CP-10-01215

Mansfield at Park West, Inc.,

Plaintiff,

vs.

D.R. Horton, Inc.,

Defendant.
_____/

30(b)(6) DEPOSITION OF MANSFIELD AT PARK WEST, INC.
(MICHAEL JOSEPH FRAPPIER)

Pursuant to Notice of Deposition and/or agreements in the above entitled case, the Deposition of Michael Joseph Frappier was taken on July 22nd, 2022 at Clawson and Staubes, 126 Seven Farms Road, Suite 128, Charleston, South Carolina, commencing at 10:06 a.m.

KAREN A. BELANGER, CVR-M

Q. What was in them? What types of documents?
A. It was information pertaining to the association with Mansfield.
Q. Was there financial documents in there?
A. Yes.
Q. I'm going to let you off the hook a little bit here, and we're going to look at some of this stuff. We'll go through as many documents as I can, okay? Did you look at the covenants and restrictions and bylaws in preparation for this deposition?
A. No.
Q. Have you ever read them?
A. Yes.
Q. What is the owners association opinion or position on the obligation of the owners or owners association to maintain and repair the exterior of the units including the roofs and the exterior cladding or exterior siding?
A. Can you say that again?
Q. Sure. Who has to do the maintenance and repairs of the individual units?
A. The exterior is the homeowners.
Q. As far as you could tell, has it been the owners association's position that the maintenance and

repair of the exterior of the townhomes is the owner's responsibility?

A. Yes.

Q. Do you know if that has ever changed?

A. No.

Q. In reviewing the documents and preparing for today's deposition, is the owners association ever provided maintenance and repair for the exterior of the townhomes?

A. I'm sorry. Say that again.

Q. Sure. In preparing for today's deposition, reading documents and looking at different things, could you determine whether the owners association has ever paid for or provided maintenance or repairs for the exterior of the townhomes?

A. I'm not aware of that.

Q. We may be able to look at some of these financial documents, but it appeared to me that the owners association has never had a line item for each year that the owners association has been a going concern. It has never had a line item for exterior maintenance of the townhomes. Can you confirm that?

A. No.

Q. Can you tell me how the owners association is the

plaintiff in a case for the exteriors of the units that it does not either have a responsibility for, has not maintained, and has not repaired for over a decade?

MR. CHAKERIS:

Objection. You can answer that question.

WITNESS:

Excuse me?

MR. CHAKERIS:

You can answer.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. He objected. It's on the record –-

A. Okay.

Q. –- but you can answer it, if you can.

A. I'm sorry. The question again?

Q. Sure. Are you here today as a representative of the owners association?

A. Yes, I am.

Q. Do you understand that the owners association is the plaintiff in this case?

A. Yes.

Q. Do you also understand that the owners association is not responsible for the repair or maintenance of the exterior components that is at issue in this case?

A. Yes.
Q. How is the homeowners association the plaintiff in this case for things at your property that it is not responsible for, has not maintained, and does not have a responsibility to repair?
MR. CHAKERIS:
Objection. You can answer that.
WITNESS ANSWERS:
A. The repairs are the responsibility of the homeowner.
EXAMINATION RESUMED BY MR. IMHOFF:
Q. I don't want to cut you off. Is that your answer or are you still thinking?
A. I'm still thinking.
Q. Okay.
A. I'm sorry. One more time.
Q. Sure. Let me change the question a little bit for you. What damages do you believe the owners association has in this case?
A. The damages for the roof and for the siding, for the faulty fencing.
Q. But my question was what damage does the owners association have, as we have just established that the owners association is not responsible to repair those components or maintain those components per

the legal documents filed on the owners association property?

MR. CHAKERIS:

Objection.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. What damage does the owners association have?

A. They'll be required to be repaired. They'll need repairing.

Q. What will?

A. The roof, the fencing, and the siding.

Q. Is the owners association responsible to repair those three things you just said? The roof, the siding, and the fencing?

MR. CHAKERIS:

Objection.

WITNESS ANSWERS:

A. No.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. Let me ask you this. Who at the owners association decided to file this lawsuit? Was it a vote? Was it you? How did this come to be?

A. This came to be –- there was the property manager, was on site checking, doing a routine check. Was there on site. Something was noticed, and they called in help to determine if there was

the right to sue anyone for faulty design and construction of the townhome exteriors and exterior building components?

MR. CHAKERIS:

Objection.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. Sir?

A. I'm thinking. I'm not clear.

Q. Are the homeowners still responsible for exterior repairs and maintenance under the covenants and restrictions?

A. Yes.

Q. Have you gone and canvassed the 28 owners to determine what repairs, maintenance, or modifications have been made to these townhomes since they were initially purchased from DR Horton?

A. No.

Q. Why not?

A. Can you rephrase the question?

Q. Sure. Have you gone and asked the individual townhome owners if their townhomes have been maintained, repaired, or modified in the last decade?

A. It was –- no, it was the responsibility of the homeowner to repair, make –- responsible for their

repairs.
Q. Do you know which of the townhomes have been painted since they were originally transferred from DR Horton to the individual homeowners?
A. I do not.
Q. Do you know which of the townhomes have had their roofs either replaced or repaired since the townhomes were transferred to the original townhome purchasers?
A. No.
Q. Do you know which homeowners have painted, repaired, modified, or changed the fences on their property?
A. No.
Q. Do you know if any of the homeowners have replaced windows on their townhomes?
A. No.
Q. Do you know if any of the townhome owners have had insurance claims on the exterior of the townhomes?
A. No.
Q. Do you know if any of the townhome owners have maintained the exterior of their townhomes by caulking, scraping, painting, or otherwise maintaining them?
A. No.

Q. Yes.
A. With the siding, the fencing. There is some rotting in the fencing in the wood.
Q. Anything else?
A. The door. The door. The fence door leading in and out to the property that's come off align.
Q. Anything else?
A. No.
Q. Have you or anyone else done anything to repair or maintain the fence since you've been there?
A. Put some screws in to –- yes.
Q. You did?
A. Yes.
Q. Put some screws into what?
A. The boards in the gate.
Q. Anything else?
A. No.
Q. Whose responsibility is it to paint the insides of the fences?
A. Inside of the fences?
Q. Yes.
A. To my knowledge, the homeowners.
Q. Is it also the homeowner's responsibility to make sure that the grade around the fences stays consistent and make sure that the fence doesn't

touch the ground?
A. Again the question?
Q. Is it the homeowner's responsibility to maintain the fences including the landscaping and the interior, water drainage, and grading on the interior to prevent the fence from touching the ground?
A. Yes.
Q. Do you know if the homeowners association ever painted or maintained the fence in its entire existence?
A. I'm not aware.
Q. Who is in charge of the litigation at the homeowners association?
A. The litigation with John?
Q. Right, handling the lawsuit. Are you handling it? Is the board handling it? Have you set up a litigation sub-committee? Are you communicating with the homeowners? Who handles homeowner questions about what's going on with the litigation, any of that?
A. The board.
Q. The whole board? All three of you?
A. In general, yes.
Q. And so are you keeping minutes or notes of what's

A. The document. The document and the homeowner vote to change the homeowners to the association.
Q. The document that was executed in 2021?
A. Correct.
Q. Okay, but that document didn't change the responsibility for repairs and maintenance of the exterior of the units to the owners association; did it?
A. No.
Q. So other than that, did you do any investigation to determine why the board was talking about doing this back in 2015 and what happened with the vote or the decision or the discussion?
A. No.
Q. Who is Rosanne Nastro?
A. She's a homeowner.
Q. She was elected to serve a term starting December 16th, 2021. Is she on the board?
A. She was on the board.
Q. Until when?
A. Till this year.
Q. Till when this year?
A. Somewhere in early spring.
Q. Why isn't she on the board anymore?
A. She resigned.

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT C.A. No.: 2018-CP-04-01787
Overlook Horizontal Property Regime Homeowner's Association, Inc.; and Kenneth Cochran and Miki Cochran, on behalf of themselves and others similarly situated; Plaintiffs, vs. Trehel Corporation; Outerbanks of Lake Hartwell, LLC; Signature Architects, LLC; Environmental Materials, LLC d/b/a Environmental Stoneworks; John Does 2–20; Carl Catoe Construction, Inc. n/k/a Ellis Homes, LLC; Builders FirstSource Southeast Group, LLC; P&L Enterprises, LLC; Diego Avalos-Rojas; Iris Morales; Marco Antonio Hernandez Vidales; Gerardo Ochoa Munoz; Valentin Morales Jimenez; Tabares Incorporated; Adan Castro; Herberto Aureo Arcos Hernandez a/k/a Herbelio Arcos Hernandez; Delfino Jacobo Mares; Delfino Construction; Ambrosio Martinez-Ramirez a/k/a Ambrocio Martinez-Ramirez; Javier Francisco Zarate a/k/a Francisco Javier Zarate d/b/a Zarate Construction; Luis Sierra a/k/a Luis Lopez Sierra; Sergio Vargas; Rodolfo Cruz; VMS Construction; Martin's Roofing; and Jamie Padilla; John Does 38-40; and John Does 41-50; Defendants. AND Carl Catoe Construction, Inc. n/k/a Ellis Homes, LLC,	**ORDER GRANTING SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR NEGLIGENCE AND BREACH OF WARRANTY**

EXHIBIT C

Third-Party Plaintiffs,	)
vs.	)
	)
Adan Castro; Herberto Aureo Acros Hernandez a/k/a Herberto Arcos Hernandes; Delfino Jacobo Mares; Delfino Construction; Ambrosio Martiniez-Ramierez a/k/a Ambrocio Martinez-Ramierez; Javier Francisco Zarate a/k/a Francisco Javier Zarate d/b/a Zarate Construction; Luis Sierra; Sergio Vargas; Rodolfo Cruz; VMS Construction; Martin's Roofing; and Jamie Padilla,	)
	)
Third-Party Defendants.	)

This matter is before the Court on the motions for partial summary judgment filed by the following Defendants: Signature Architects, LLC; Trehel Corporation; Carl Catoe Construction n/k/a Ellis Homes; P&L Enterprises; Environmental Materials, LLC d/b/a Environmental Stoneworks; Ambrosio Martinez-Ramirez a/k/a Ambrocio Martinez-Ramirez; Zarate Construction; Gerardo Munoz; and Herberto Hernandez. Also before the court is the motion for summary judgment filed by Defendant Iris Morales. These motions (collectively, the "Motions") seek dismissal of Plaintiffs' claims for simple negligence and breach of warranty on grounds that those claims are barred by the statute of repose codified in S.C. Code § 15-3-640. Defendant Morales also seeks dismissal of Plaintiffs' gross negligence claims based on the statute of repose.

The Court conducted a hearing on the Motions on September 22, 2021, at which hearing counsel for Plaintiffs and the Moving Defendants appeared and made oral arguments.

After careful review of the pleadings, the materials submitted for the hearing by the parties, the applicable law and arguments of counsel, the Court finds that Plaintiffs' causes of action for simple negligence and breach of warranty were not filed in a timely manner and therefore are barred under the statute of repose. Pursuant to S.C. Code § 15-3-670, the statute of repose does

not affect Plaintiffs' causes of action for damages caused by gross negligence; so those claims by Plaintiffs remain unaffected by this Order.

I. Background

Plaintiffs are the homeowners' association and certain homeowners at the Overlook Condominiums (the "Project") near Lake Hartwell in Anderson, South Carolina. Signature served as the architect of record for the Project's construction pursuant to a verbal agreement with general contractor Trehel Corporation ("Trehel"). The remaining Moving Defendants and the other named Defendants in this case served as Project suppliers and/or subcontractors.

The Project consists of seven condominium buildings and a Clubhouse, all of which Plaintiffs claim were defectively designed and constructed. Certificates of occupancy (COs) for the Project's various buildings were issued between February and August 2006.

Plaintiffs filed the present action on September 11, 2018, and amended their pleadings on November 28, 2018; April 12, 2019; and December 19, 2019. Plaintiffs' claims against each of the Moving Parties include causes of action for "Negligence/Gross Negligence," as well as "Breach of Warranty" of either workmanship or plans and specifications. Plaintiffs also have alleged that Defendants engaged in gross negligence and breached their respective duties to Plaintiffs in a wanton and reckless manner.[1] The Moving Defendants seek summary judgment on Plaintiffs' causes of action against them for simple negligence and breach of warranty, asserting that the applicable eight-year statute of repose, S.C. Code § 15-3-640, bars those claims. Defendant Morales further seeks dismissal of Plaintiffs' gross negligence claims, contending that the exceptions to that statute found in S.C. Code § 15-3-670 do not apply and that judicial or

[1] For purposes of this Order, "gross negligence" shall include recklessness.

regulatory findings with respect to those exceptions must have been made prior to the expiration of the statute of repose.

As explained below, this Court finds that the clear and unambiguous language adopted by the S.C. General Assembly in Section § 15-3-640 does not allow causes of action for simple negligence, breach of warranty, or breach of contract to be asserted outside of the statute of repose. Therefore, and because more than eight years expired between the Project's date of substantial completion and Plaintiffs' filing of this action, this Court finds that Plaintiffs' claims for simple negligence and breach of warranty are time-barred. The Court finds that Plaintiffs' claims for damages caused by gross negligence are not barred by the statute of repose and are unaffected by this Order.

II. Legal Standard

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *BPS, Inc. v. Worthy*, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).

III. Discussion

Section 15-3-640 of the South Carolina Code provides: "No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement." This

legislation by the S.C. General Assembly, like other statutes of repose, establishes an absolute time limit beyond which liability no longer exists. *Langley v. Pierce*, 313 S.C. 401, 404, 438 S.E.2d 242, 243 (1993). As the South Carolina Supreme Court has explained:

> Statutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time limit beyond which liability no longer exists.
>
> Society benefits when claims and causes are laid to rest after having been viable for a reasonable time. When causes of action are extinguished after such time, society generally may continue its business and personal relationships in peace, without worry that some cause of action may arise to haunt it because of some long-forgotten act or omission. This is not only for the convenience of society but also due to necessity. At that point, society is secure and stable.

Id. at 405, 438 S.E.2d at 244 (internal citations and punctuation omitted). The South Carolina Supreme Court has further recognized that statutes of repose by their very nature "impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists." *Capco of Summerville, Inc. v. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006).

Section 15-3-670 of the S.C. Code provides certain exceptions to the statute of repose. The defense is unavailable to a person who is in actual possession or control of the real property in question and who knows or should have known of the defective or unsafe condition that proximately causes injury or death; nor does it shield a defendant who is "guilty of fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to a person who conceals any such cause of action. S.C. Code Ann. § 15-3-670(A). The statute of repose also does not bar claims in actions for personal injury or property damage which is not discoverable in the exercise of reasonable diligence and

results from exposure to toxic or harmful particles over a period of time. S.C. Code Ann. § 15-3-670(C).

Section 15-3-640 explains that for its purposes, the date of "substantial completion" of any improvement to real property can be proved by the certificate of occupancy issued by a county or municipality, unless the contractor and owner establish a different date of substantial completion by written instrument. S.C. Code Ann. § 15-3-640. The statute's limitations do not apply to claims of gross negligence or recklessness in providing materials or services in connection with an improvement to real property. S.C. Code Ann. § 15-3-670.

In this case, the Certificates of Occupancy for all of the Project's buildings were issued in 2006. Plaintiffs filed their claims against each of the Moving Parties and all other Defendants either in 2018 or 2019, admittedly more than eight years after the date of substantial completion of the last of the Project's buildings. Plaintiffs have not alleged an agreement by the parties to a different or later date of substantial completion, or the existence of any express warranty extending the warranty period beyond the statute of repose. Further, as explained below, no exception provided in Section 15-3-670 prevents the statute's application as to Plaintiffs' causes of action for negligence and breach of warranty; so summary judgment is entered in Defendants' favor as to those claims.[2] Plaintiffs' claims for gross negligence do fall within Section 15-3-670(A)'s exemption; so those claims are unaffected by the statute of repose and by this Order.

This Court rejects Plaintiffs' argument that the statute of repose is not available as a defense if a defendant committed gross negligence, because this interpretation contradicts the plain

[2] This ruling is this consistent with the rationale set forth in other South Carolina circuit court orders. *See, e.g., Xanadu Association, Inc. v. Carolina Traditions Development, LLC* (S.C. Ct. Comm. Pls. 2021); ; *Ripley Cove Property Owners Ass'n v. Coastland Enterprises, LLC* (S.C. Ct. Comm. Pls. 2021); *Collins v. Capitol Indemnity Corp.* (S.C. Ct. Comm. Pls. 2017). It also is consistent with reported South Carolina district court authority. *See Hampton Hall, LLC v. Chapman Coyle Chapman & Associates Architects AIA, Inc.*, 2017 WL 6622508 (D.S.C. 2017), and *Hampton Hall, LLC v. Chapman Coyle Chapman & Associates Architects AIA, Inc.*, 2018 WL 679454 (D.S.C. 2018).

language of the statute and defeats the S.C. General Assembly's clear intent to allow a defendant the substantive right to be free from liability after a certain period of time. "The goal of statutory construction is to ascertain and give effect to the legislature's intent." *Allstate Ins. Co. v. Estate of Hancock*, 345 S.C. 81, 86, 545 S.E.2d 845, 847 (Ct. App. 2001). Courts are required to determine intent primarily through the plain language of statutes, *id.*, and it is not the courts' place to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The unambiguous language of Section 15-3-640 evinces the S. C. General Assembly's intent not to allow causes of action for simple negligence, breach of contract, or breach of warranty to be asserted outside of the statute of repose, regardless of whether a plaintiff also pleads or can prove a gross negligence claim.

Also lacking merit is Plaintiffs' argument that the progressive damage exception to the statute of repose set forth in S.C. Code Ann. § 15-3-670(C) applies in this case to spare Plaintiffs' simple negligence and breach of warranty claims. That statutory section provides:

> (C) The limitation provided by Section 15-3-640 may not be asserted as a defense to an action for personal injury, including a personal injury resulting in death, or property damage which is:
>
> > (1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; **and**
> >
> > (2) the result of ingestion of or exposure to some toxic or harmful or injury producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma.

S.C. Code Ann. § 15-3-670(C) (emphasis added).

Both requirements of Section 15-3-670(C) must be satisfied for the exception to apply, and Plaintiffs have not done so in this case. Plaintiffs focus on the exception's first requirement of discoverability, ignoring the plain meaning of the second requirement concerning toxicity or harmfulness. Requirement (2) is not met, because there is no evidence in the record that Plaintiffs'

property damage occurred from exposure to a substance that is toxic or to harmful particles over time. Instead, Plaintiffs allege that their property has been damaged by water intrusion. Almost every construction case involves claims of water intrusion; therefore, a ruling by this court that water constitutes a harmful substance barring application of the Statute of Repose would render the Statute of Repose effectively meaningless, vitiating legislative intent. Water which causes property damage cannot rationally be deemed to be a "toxic or harmful or injury producing" substance, element, or particle to which Section 15-3-670(C)'s exception applies.[3] Clearly, the substances included in the exception would be radiation, toxic chemicals, asbestos or similar items. Plaintiffs' attempt to invoke the Section 15-3-670(C) exception in this case thus fails.

The Court also rejects Plaintiffs' contention that compliance of building permits with S.C. Code Ann. § 15-3-640's notice requirement is a condition precedent for the statute of repose to apply. In essence, Plaintiffs argue that the building permits for the Project lacked the bold-type notice of the statute of repose required by Section 15-3-640, and that this omission renders the statute inapplicable. This argument lacks merit for two reasons. First, the building permits were issued by Anderson County municipal officials, not Defendants. If Plaintiffs believe those officials injured Plaintiffs by violating a statutory requirement to provide notice of the statute of repose, then any remedy for same should have been sought from Anderson County. No authority exists for Plaintiffs' proposition that a county building inspector may unilaterally waive the ability of a contractor, design professional, or a subcontractor to assert the statute of repose as a defense to liability.

Second, Plaintiffs' argument ignores the fact that the "cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature," and that in doing so, courts

[3] Similar rationale in this regard was employed in *Collins v. Capitol Indemnity Corp.* (S.C. Ct. Comm. Pls. 2017).

"must give the words found in the statute their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (internal citations and quotations omitted). Plaintiffs can identify no language in the statute itself and provide no legal support for their contention that the statute of repose contains such a condition precedent. Further, principles of interpretation applicable to contract law direct that "a condition precedent may not be implied when it might have been provided for by the express agreement." *Plantation AD, LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 208, 687 S.E.2d 714, 719 (Ct. App. 2009). The General Assembly could have included a condition precedent in Section 15-3-640, but it did not. In sum, a court should not imply a condition precedent when it is not expressly stated in the statute, and this Court expressly declines to do so in this case.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** summary judgment on Plaintiffs' causes of action for simple negligence and breach of warranty, because the eight-year statute of repose, S.C. Code § 15-3-640, bars those claims. The Court **DENIES** Defendant Morales' motion for summary judgment on Plaintiffs' gross negligence claims, because Section 15-3-670 renders the statute of repose inapplicable to those claims. This ruling leaves pending Plaintiffs' claims in this action for damages allegedly caused by gross negligence or recklessness.

IT IS SO ORDERED.

END OF ORDER

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

Anderson Common Pleas

Case Caption: Kenneth Cochran , plaintiff, et al VS Trehel Corporation , defendant, et al

Case Number: 2018CP0401787

Type: Order/Summary Judgment

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

EXHIBIT C

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON C.A. NO. 2021-CP-10-01215

Mansfield at Park West, Inc.,

Plaintiff,

vs.

D.R. Horton, Inc.,

Defendant.
_____/

DEPOSITION OF RUSSELL TODD MEASE

Pursuant to Notice of Deposition and/or agreements in the above entitled case, the Deposition of Russell Todd Mease was taken on July 19th, 2022 at Clawson and Staubes, 126 Seven Farms Road, Suite 128, Charleston, South Carolina, commencing at 10:06 a.m.

KAREN A. BELANGER, CVR-M

correct?
A. Yes.
Q. Contractor's name is DR Horton, Inc. Do you see that?
A. I do.
Q. And the construction type, new townhome, 2006 IRC with occupancy type R-3 and IRC residential 1 and 2 family. Is that what it says?
A. Yes.
Q. And it is signed by a building official. Do you know who that building official would be in Mount Pleasant back in 2009?
A. I'm sorry. I can't read that.
Q. Yes, I assume you couldn't read it. I guess my question was more do you know who it was back in 2009, just based on your work?
A. Not specifically, no.
Q. And since we're here, how many buildings are there total?
A. Well, if you look at the front cover of the report you can see a photograph showing the property. And there's four buildings that are lined along the street there.
Q. Can I see what you're looking at, four buildings?
A. Just the cover of my report. That's an aerial

photo of the property and it's these four buildings along the street.

Q. I see more than four.

A. Well, those are not included. Those are some residential home that are in the back. But the four buildings that are right along the street there in the middle of the photograph, those are the –- that's the property.

Q. I see six. There are not six?

A. Well, maybe I –-

Q. One, two, three, four, five, six.

A. Oh, that's right. I'm sorry. The two end buildings are smaller than the two central buildings. You're right, it's six. My apologies.

Q. Okay, so there are six buildings total?

A. Correct.

Q. And because this is the IRC, was the jurisdiction evaluating each unit and not each building?

A. Well, these are townhomes.

Q. Right.

A. And because they're townhomes and they're not vertical construction, they fall under the residential code. But the buildings as a whole, when I'm looking at the exterior envelopes, which is what I evaluated, the buildings are individual

buildings. There are units within the buildings. And to be quite honest, it doesn't really matter. Everything in the construction of these buildings falls under the residential code.

Q. Yes, and I see what you're saying. But there are permits and COs for each of the residences, right? Not each of the buildings. There aren't six permits and COs. There's 20 permits and COs, right?

A. Right, because each unit is an individual property. And depending on how the deed is written, you know, the responsibility of who owns what falls in that definition. But they are sold as individual pieces of real estate. So each one has their own building permit.

Q. Did you do any investigation or analysis into who owns the three areas that you looked at? The roofs, the exterior building envelopes, or the fences?

A. It's my understanding that they belong to the association, which is typical with these type of properties, and that was related to me through counsel.

Q. As common elements?

A. Right.

A. It depends. There's no right answer to that. A general contractor can have several people on their staff, for example. Some may be more aligned with plumbing. Some may be more aligned with framing. And they may send certain people out, especially a large organization such as DR Horton. They can send somebody out who is very familiar with framing to look at the framing while it's going on. And then somebody will come back later and watch the electrical being put in or the mechanical. So it just depends on how you want to manage the project.

Q. Right. Do you know how this one was managed?

A. I don't.

Q. Do you know the qualifications of the superintendent on site?

A. Again I don't have any information on that.

Q. Can you say today, in your opinion, that this project was not appropriately overseen by DR Horton?

A. One hundred percent.

Q. And what's the basis of that opinion?

A. Well, if you get into my report, simple things like choosing siding that doesn't even belong in this wind zone that should never have been put on the building. I mean that's just a gross dereliction

of duty. Things like that are obvious signs of lack of quality control.

Q. Do you know who choose the siding?

A. I don't, but the responsibility eventually falls with the general contractor.

Q. And I want to make sure that we clarify that today, okay? That your opinion is that the responsibility falls to the general contractor, not necessarily that you know that the general contractor picked that siding. Does that make sense?

A. Correct, and again the installer also bears responsibility. I'm not going to say that that's not true, because they do, especially if they're putting themselves out there as an expert in these areas to do this work as a qualified contractor.

Q. Right.

A. They should know which siding to pick and which nails work and which windows work, and how to put the stuff on, yes. They should know how to do that. Again the general contractor needs to know that information as well, or at least have it presented to them by their subcontractor so they can say yes that's appropriate.

Q. As I understand it, the way it actually works as I understand it, is that a lot of this work is done

tell them. And I have seen some documents that are like overall general guidelines that are produced by large builders, and it's kind of a booklet that the subcontractors have to sign off on. And I know there's a lot of language in those things. I don't really consider that a –- I guess it is kind of a contract, but it's not like a work contract.

Q. So there are three areas, and we'll go through them specifically. But there are three areas of construction deficiencies you found, which you testified to earlier and are in your report. The roofs, the siding, and the fences; is that right?

A. Right, and there's some questions around the windows. But, yes, those areas.

Q. And we'll go through them specifically, if you want to sort of hold off, but in general can you distinguish which parts of those construction deficiencies you think highlight lack of oversight by the general contractor versus a close question versus something the general contractor probably wouldn't see?

A. Yeah, there's plenty of examples. I mean, I don't know where you want to start. I've got them listed through the report, but there's lot of things that should have caught someone's eye.

where you would go. You would have to go to the responsibilities of the general contractor based on each state's requirements.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. Yes, so that's my next question. Is there actually a best practices manual that tells national homebuilders, tract builders how they're to conduct their work? Put a superintendent on the roof. Make sure that you have superintendent for every three permits, you know, anything like that.

A. There may be. I don't know. I don't deal in those documents.

MR. CHAKERIS:

How about we take a quick break?

MR. IMHOFF:

Sure.

(OFF THE RECORD)

EXAMINATION RESUMED BY MR. IMHOFF:

Q. I don't see it in here. Do you know how many townhomes there are in those six buildings?

A. I don't know that I ever counted. I think we could figure it out. Let me look at that photograph again. I think you can tell by the dormers, is why I'm saying that, on the top.

Q. I'm not sure that it's that important, but I

wondered if you put that in anywhere.
A. I know how we can tell.
Q. It's just not that important.
A. Okay.
Q. I mean if it's going to take more than a couple minutes.
A. Well, my spreadsheet that lists the permits, I think it has all of them. The addresses are all there. So just –- you can just count them there, but you have to exclude the clubhouse. That's the only thing that you're going to have to do. So let me do that real quick and we'll have that answer.
Q. Is it named, that one?
A. Yes, it's the permit and CO information.
Q. It's actually called permit and CO information?
A. Right, Mansfield Townhomes Permit and CO. Twenty-six is what I count.
Q. And you just literally counted them. You didn't number them?
A. Right, the addresses are listed there.
Q. Yeah, starting with 3001 through 3105.
A. Yes, excluding the clubhouse –-
Q. Yes.
A. –- which is one odd number.
Q. It is a little bit odd. It's a 2005 permit; is

that right?
A. Correct. And I think I included that because it was actually in the file. But I think that clubhouse might be associated with more than one property. I think it's a pool house that is a shared kind of thing. But, I mean, I can't prove that. But I think that might be the case.
Q. And we can go look, if you want to. Was that permit 2005 pulled by DR Horton?
A. I don't recall. We could look.
Q. Well, let me ask you this. Did you do any evaluation of the clubhouse?
A. I did not.
Q. Any construction defect evaluation, opinions on the clubhouse?
A. I never went to the building.
Q. Well, that doesn't mean you couldn't have opinions. You don't have any opinions about the clubhouse?
A. I do not.
Q. You distinguish the four inner buildings from the two outer building earlier in your testimony. And tell me if I'm wrong, but it seemed that you did distinguish them a little bit. Did you do investigation on the two end buildings also?
A. Yes, I touched each of the buildings.

dates range from 2009 to 2010; is that right?
A. Yes, that is listed in my report.
Q. And again Exhibit Number 3, your Mansfield Townhomes permit information, the certificate of occupancy dates for the buildings you're here testifying about today were issued between 2009 and 2011; is that correct?
A. Yes.
Q. And that document is just your work product taking information and dates from the actual building files that have the permits, inspections, and certificate of occupancy information in them –-
A. Correct.
Q. –- that you've already provided to us?
A. Correct.
Q. Thank you. All right, let's go back to your report. I'm at construction deficiencies on page 3. Let me ask you this. Are there any areas of construction deficiency that are not set forth in this report, that you have opinions about on these six buildings?
A. There could be. But as far as my opinions for this property, these are the things that I evaluated. I didn't look at everything over the entire property. So it –- my opinions are limited to what I've

documented here.
Q. You testified about windows, or you mentioned it. Maybe it's testimony, maybe it's just mentioning it. Probably both. Is your opinion regarding windows fully set forth in this document?
A. Yes. And again I write this document trying to be as lay person friendly as I can, so that people read it and they're not speaking engineering language. There is something that's a little esoteric about the windows themselves, which we'll talk about. So it is covered in this report. Probably when we get to that section, it'll make more sense.
Q. All right, let's do it this way, just for efficiency to get through this. Why don't I let you sort of drive. And why don't you tell me and I'll ask questions what your opinions are in the order of this report? In other words, I think you start with siding. So in general, tell me about your opinions on the siding.
A. Okay, as I mentioned before, we found multiple varieties of siding on the property. Two we were able to identify, which were HardiPlank and CertainTeed. And then there was another group that was not labeled. Now the way that I was able to

identify the siding is when I removed the siding, most manufacturers put some type of labeling on the back. They'll apply an inkjet printed label and/or a UPC sticker kind of label on the backs of the boards. And most of the time I can find out what brand of siding it is. But one brand that I know from experience that does not label their boards typically is a brand called Nichiha.

Q. How do you spell that?

A. N-I-C-H-I-H-A, Nichiha. Okay?

Q. Is that a Mount Pleasant company?

A. No, it's actually a Japanese company that does produce fiber cement products in the United States. And so I think I know what the unknown siding is, but again I can't prove it. I don't have a receipt or an invoice that documents what it was, and it's not labeled. But I handle a lot of siding. So I usually can kind of recognize what products I'm dealing with. And Nichiha, like I said, is a little unique in that it's typically not labeled on the back. You can also tell by the texture of the boards on the front, the wood graining that is placed. Hardie's looks a certain way and CertainTeed's looks a certain way. And Nichiha has a –- kind of a certain style to it as well. So

can't prove it, but I believe that the unknown siding is most likely Nichiha. So having said that, the real problem that we have is, first and foremost, selection of siding. Nichiha will not meet the wind load requirements of Mount Pleasant, South Carolina no matter how you install it. So it should never have been put on the buildings in a blind nail fashion, okay? CertainTeed siding cannot meet the wind load based on a blind nail installation in Mount Pleasant, South Carolina. HardiPlank can meet the requirement for a blind nail siding installation, if it is installed properly. And that's really the only siding that we need to focus on, because the other two should never have been put on the building the way it was done, because they can't meet the wind load. So it's not a legal product in our jurisdiction that we're talking about.

Q. Can I stop you there? Is that a good place to stop?

A. Sure.

Q. If installed differently, could CertainTeed meet the wind zone requirements?

A. You would have to install it in a face-nailed application, not a blind nailed application.

thick to begin with. And while cement is very strong, it is brittle. And if you crack it, then it's not going to give you the strength that you are expecting.

Q. And do you document how far overdriven the fasteners are?

A. Doesn't matter. If it's below the surface of the board, that's what the manufacturers say –- do not drive the head of the nail below the surface of the board.

Q. Have you dealt with fiber cement plank siding on any of your other forensic work projects?

A. Oh, my gosh, yes, on hundreds of buildings.

Q. Hundreds of buildings. Have you ever seen overdriven fasteners such as exhibited in photo 12 on any of those other projects?

A. Certainly. This is a common problem. And the reason is very easy to understand as well. These nails are placed with a pneumatic air nailer. So you have to be very diligent as an installer and either do one of two things. You have to adjust the pressure so that your nail is coming out flush with the board and not overdriving it. Or if you are a siding installer, and this is something I complain about frequently –- you're a professional

Q. I mean we're making some assumptions. The assumption is that the shingle manufacturer that's widely available, that's appropriate for the jurisdiction, it's appropriate for the wind loads. We're assuming all those things. Assuming those things are true, it would be a product issue unless we bought some off-brand noncompliant shingles and installed them. Right?

A. Right, and I'd find that to be difficult to believe because, you know, shingles are readily available and there are certain manufacturers that tend to make all of them.

Q. Right. And hopefully whatever is available locally is appropriate for local installation, right?

A. You hope.

Q. But we'll find out, okay. Are overdriven nails in a roofing installation a common defect that you see in your work for the last 30 years?

A. It is, but again you have to understand what I'm called to do. I am typically called out to look at problematic structures. So I can't say everybody does it wrong, because I can't say that. I'm just called out to look at certain properties that are oftentimes in distress or having issues. And, yes, it's very frequently that I find this same problem.

It's not always, though. I would say, and I've testified to this many times, probably ten to 15 percent of the time I'll look at the shingles and I'll find they're okay and I'll just walk away. Because if it's not a deficiency, obviously I'm not going to pursue it. But about ten to 15 percent of the time the shingles are okay.

Q. In your work and experience the last 30 years, you find that the shingles have been installed correctly about ten to 15 percent of the time?

A. Right, on the projects that I've looked at. And again I'll go back to what I said about the siding. They make nail guns for shingle installation so that you cannot overdrive the nails. And if you're a roofer, I don't know why in the world you don't buy the correct gun to control that process.

Q. And I'm not going to repeat your words correctly, but something along this situation or this observation you find somewhere between 85, 80 percent of the time, or whatever you said –- 85 to 90 percent of the time what observation exactly? Overdriven? Angle driven? What else?

A. Right, those conditions as far as the fastening. That's what I see most frequently. The wear that I saw on this roof is very uncommon. I don't see

this hardly ever. That's usually not a problem.
Q. Photograph 27 has all these black arrows.
A. Correct.
Q. What are they pointing to?
A. Well, if you look closely at the picture, and I know it's hard to tell in a photograph –- but if you zoom in on this picture, you'll see fiberglass showing along the bottom edges of the shingles. The aggregate along the edges of the shingles have come off. It's worn off.
Q. Okay, and so each one of those arrows points to an area where the aggregate is worn off?
A. Correct.
Q. And do you have an opinion as to why the aggregate is wearing off?
A. Again this is an unusual condition that I don't usually see. So it's a little surprising. If you look at photo 30, you'll see a closeup of what I'm talking about.
Q. All right, let's go back to 28 and 29. What do these photographs show?
A. Same thing except for I'm showing there's aggregate loss in the field of the shingle, not just on the edge. So you can see the fiberglass core in the middle of that shingle. It appears during the

MR. CHAKERIS:
Objection.
WITNESS ANSWERS:
A. I know what you're asking and the answer should be yes. The problem is I've gone through all these cases throughout time and it depends on the individual. I mean there are people that have testified multiple times from the general contractor's perspective or subcontractor's perspective that they didn't know the rules. They'll actually admit it in deposition, that they didn't know the rules. So it depends on the knowledge of the individual. If they know what's going on, yes, they should be able to recognize that.
EXAMINATION RESUMED BY MR. IMHOFF:
Q. Do you know when these shingles were replaced or by who?
A. In those areas where it was –- no, I don't have any information on that. I hate to do this. I drank too much sweet tea.
(DISCUSSION OFF THE RECORD; OFF THE RECORD)
EXAMINATION RESUMED BY MR. IMHOFF:
Q. I know I asked you half of this question earlier, but I'm going to ask the second half now. Is it

also a common construction deficiency in your work and investigation over the last 30 years to find that the fasteners and plank siding are too far apart or not in framing?

A. It's a common finding, yes. It's one of the typical conditions I find in a defective installation.

Q. Do you have any other opinions about the roof that we have not discussed?

A. No, I don't think so.

Q. Let's start with windows. This is page 27 of your report. You said the windows are designed for use of vinyl siding and include an integrated j-channel along the perimeter of the frame. Are there windows designed for different exterior claddings?

A. Oh, yes.

Q. Is it inappropriate to use windows that are designed for vinyl siding in a Hardi or just plank siding?

A. It can be. And the reason I say this, if you look at this window frame –- I think the best photograph is 42. I'm looking at the bottom of the window as it's installed on the wall.

Q. I had a question about this. Are we looking up in this picture?

A. To a degree, but here's the other thing you have to consider. I see this condition all the time. It's a very common thing that I run across. I have stacks and stacks of photographs that show damage below these window corners from this abutted condition throughout my –- this work. It is showing up in these buildings in two locations. But a long term problem is the buildup and momentum of the water as it works on these materials and gets in there, and it eventually can lead to failure. There's a lot of water that gets in, way more than you realize, because this joint is not sealed. And so when I see it on the building, I also have to take into my assessment the history of how these things fail. And I see it over and over again.

Q. So I guess that answer to that is no, you don't have a number. You don't have, say, if I find 50 percent in the field that have water damage or failing or design or installed incorrectly, then that's an endemic problem to me, whereas if I find ten percent that's not endemic? You don't have a number like that in your mind; is that right?

A. I'll say it this way. Water in the wall is 100 percent code violation. It's always a code

CertainTeed siding and change the installation. So what's there is illegal and it has to be removed.

Q. Well, it's not installed properly. Right? It's not a product issue. It's the way it was installed.

A. Well, yeah, but you can't fix that. The way it was installed, the way it was selected and installed, it can't work. If you're going to put a blind nailing installation on these buildings, which is what they did and obviously what they intended to do, you should have gone into the CertainTeed instructions and realized, oh, my, CertainTeed does not meet this requirement. We can't do it this way. We should have driven you to HardiPlank and you should have bought HardiPlank. So it's a selection problem at the beginning of the project. And again I'm pretty sure this other siding is Nichiha, and it cannot go on the walls at all.

Q. We don't know if it's Nichiha, right?

A. Again this is my experience talking. I can't prove it, because I don't have any documentation of it. But I'm pretty certain the rest of that siding is Nichiha.

Q. And we don't know DR Horton selected CertainTeed, Hardi board, or Nichiha. Right?

STATE OF SOUTH CAROLINA	)	IN THE ARBITRATION OF
	)	
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
	)	
MANSFIELD AT PARK WEST, INC.,	)	
PLAINTIFF,	)	**D.R. HORTON, INC.'S**
	)	**MOTION TO VACATE**
vs.	)	
	)	
	)	
D.R. HORTON, INC.,	)	
	)	
DEFENDANT.	)	
	)	

Defendant D.R. Horton, Inc. ("D.R. Horton") hereby files this Motion to Vacate the Arbitration Award as follows:

Introduction

Plaintiff is the Homeowner's Association for The Mansfield at Park West, a 28-townhome community D.R. Horton developed more than a decade ago. Plaintiff sued D.R. Horton claiming defects in the installation of the roofs, siding, and windows.[1] After the Statutes of Limitations and Repose had expired, the homeowner's association improperly changed the Declaration of Covenants, Conditions and Restrictions ("CCRs"), Exhibit A, Section 5.1 in an attempt to give Plaintiff the putative power to pursue the homeowner's alleged building defect claims and it used that putative power to sue D.R. Horton in the homeowner association's name. The HOA also changed the dispute resolution provisions of the CCRs. Exhibit A, Article XVII.[2] The parties ultimately agreed to arbitrate. Exhibit D, Consent Order. This motion concerns that

[1] Plaintiff also claimed the fences were defective, however, the arbitrator did not find for Plaintiff on this issue.
[2] Compare the CCRs, First Amended CCRs, and the Second Amended CCRs. Exhibits B, C, and A.

arbitration, which resulted in an award issued on August 22, 2023, by arbitrator Thomas J. Wills, IV. Exhibit E. The parties agreed that a *reasoned award* would be issued. The arbitrator issued a partially reasoned award with three pages devoted to its reasoning for finding D.R. Horton liable for gross negligence but failed to complete the requirement for a reasoned award as to all other issues.[3] The arbitrator did not issue a reasoned award as to standing and real party in interest or as to any of the many issues relating to damages.[4]

Prior to commencement of the arbitration hearing on July 26, 2023, D. R. Horton filed a Motion for Summary Judgment and memorandum on August 30, 2022, and a Reply Brief, in which it argued that due to the contractual provisions in the parties' CCRs, the Plaintiff lacked standing to bring the claims and was not the real party in interest. Exhibits F, G and H. D.R. Horton also filed a Trial Brief in which it asserted those same issues and again raised the issues at the arbitration hearing and in closing arguments. Exhibit I, 7/31/2023 Tr. pp. 314 - 326 . Pursuant to §18.1 of the CCRs, amendments thereunder were not allowed until after the initial twenty-year term ended on September 30, 2027, and thereafter any amendments must be recorded for at least three years before any amendment would be effective. The "Second Amended" CCRs violated the terms of the CCRs of which D.R. Horton is a party. The arbitrator erred when it allowed the HOA standing and real party in interest status based on the amended CCRs. Rule 17(a), SCRCP requires that every action be brought by the real party

[3] D. R. Horton submitted to the arbitrator a proposed reasoned award consistent with the agreement that a reasoned award would be issued. Exhibit J.

[4] The reasoned award finding D.R. Horton liable also resolved the intertwined Statute of Repose issue. D.R. Horton disagrees with the arbitrator's conclusions. The arbitrator agreed that in the 12-14 years since the buildings were completed there has been no interior damage to the townhomes, which is what the siding, roof and windows are required to prevent. Exhibit Y, 7/31/2023 Tr. pp 274 lines 20-24 and p. 279 lines 7-13 ("I'm not saying it's prematurely failing. I'm not even arguing that because there's very little proof. There's leaks around the windows maybe and there's some problems with the shingle issue.") Despite no evidence of the complained about systems prematurely failing, the arbitrator then finds D.R. Horton grossly negligent.

in interest. Plaintiff violated this basic rule. Despite the prominence of the issue, the arbitrator did not issue a reasoned award on this issue and exceeded his authority and manifestly disregarded the law when he allowed Plaintiff to have standing and real party in interest status over D.R. Horton's objection and contrary to the contractual provision providing otherwise.

The arbitrator also failed to issue a reasoned award as to any aspect of the damages portion of the award and manifestly disregarded the law of damages.[5] The arbitrator awarded a slightly more than three million dollar lump-sum damages amount to Plaintiff down to pennies: (i) without any specification as to how the damages were connected to or caused by the alleged breach of duty, (ii) without any itemization as to how the damages were calculated or apportioned among the alleged issues with the roofs, siding, and windows, and (iii) without any clarification as to any offset or mitigation against damages for the 12-14 years the homeowners had the beneficial use of, and the responsibility to maintain, the roofs, siding, and windows. The lack of clarity as to the award is confusing, given that the arbitrator awarded a very specific amount of $3,057,112.48. The arbitrator's award speaks of a set-off for the roofs due to the years of service the roofs protected the townhomes; however, the award does not specify the amount of the roof set-off or how it was calculated, does not provide for whether the townhome with the new roof was excluded from receiving damages for its roof,[6] and is silent as to any set-off for the siding or windows – leaving an internally inconsistent and unexplained damages award. D.R. Horton filed a motion for clarification regarding the damages award, Exhibit M, which the arbitrator summarily denied. Exhibit N.

[5] Compare Plaintiff's expert's wholesale replacement itemization of damages with D.R. Horton's expert's repair document. Exhibits K and L. Plaintiff's expert's document includes many items not awarded and includes no depreciation or lifespan usage considerations.

[6] One homeowner filed an insurance claim for hail damage to the roof. The insurance company paid for a new roof.

The arbitrator failed to provide the agreed upon reasoned award as to each of the foregoing damages issues, exceeded his authority and manifestly disregarded the law.

The arbitrator also violated South Carolina law when he awarded over three million dollars for speculative damages. Each of the building components has a specific purpose and a useful life expectancy. The components have worked as expected, there has been virtually no damage to the townhomes due to any failure of the components' installations, and any assertion that there will be in the future is speculative. South Carolina does not allow awards for speculative damages. Accordingly, the arbitrator manifestly disregarded the law when he awarded "what if" damages.

The arbitrator exceeded his authority by failing to issue a reasoned award and he manifestly disregarded the law.

Factual History and Law

The Mansfield at Park West townhomes were completed, and certificates of occupancy issued in calendar years 2009 – 2011, approximately 12-14 years ago. This fact is undisputed.[7] The Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West ("CCRs") were filed on September13, 2007, and remain effective for an initial twenty-year term until September 2027. Exhibit B, §1.2. After, but only after, the initial twenty-year period ending on September 30, 2027, the CCRs may be modified by the owners pursuant to §18.1. The CCRs provide that each townhome owner is solely responsible for his or her own interior and exterior maintenance, including their individual

[7] Certificates of Occupancy confirm the timeframe. Exhibit O.

roofs.[8] Exhibits A, B, and C, §5.2. The Homeowners Association, the homeowners, and D.R. Horton, as the Declarant, are the parties to the CCRs. The homeowners attempted to transfer their rights to this litigation to the Homeowners Association on March 1, 2021, in the Second Amended CCRs. Exhibit A. However, §5.2 as to the homeowners' obligations to maintain the interior and exterior for each townhome's maintenance remained unchanged. The governing documents provide that any amendments to the CCRs do not take effect and may not be enforced until three years after an amendment is recorded and that the CCRs may be amended only after the initial twenty-year terms pursuant to §18.1. Exhibit B, §18.1. The homeowners' association violated that provision when it enacted the amendment giving it the right to pursue the defective construction claim, enacted an amendment modifying the dispute resolution provision, and filed the action against D.R. Horton in the *same* week. D.R. Horton objected to the amendments being applied prematurely.[9] D.R. Horton also argued that Plaintiff is not a real party in interest because it has suffered no damages, no losses, and is under no obligation to provide any money, resources, repairs, or replacements to the townhome owners from the lawsuit. The HOA also failed to comply with the dispute resolution process in the First Amended CCRs making the lawsuit premature as well.

Plaintiff waited until well past the Statute of Repose to file the lawsuit; therefore, it had to prove gross negligence - that D.R. Horton did use not even the slightest of care

[8] Each townhome owner owns their property in fee simple, which is unique from the ownership scheme of most townhomes.

[9] The amendment is the second amendment to the CCRs. D.R. Horton made an amendment years earlier (the First Amended CCRs) pursuant to its rights as Declarant under §18.2, which was allowed during the initial twenty-year term and did not require a waiting period for implementation. The homeowners' association amendments were made pursuant to a different section, §18.1, which requires a three-year delay between recording an amendment and implementing the amendment and is only allowed after the initial twenty-year term.

supervising the contractors and subcontractors - to overcome the Statute of Repose.[10] D.R. Horton argued it did not commit gross negligence because, among other reasons, Plaintiff's experts testified that the code violations he identified were typical and that he sees those deviations often, which strongly suggests that the deviations were ordinary and not gross negligence. Exhibit X, 7/26/2023 Tr. pp. 65, 182-183. Further, the best evidence that significantly more than slight care was used is the fact that after 12-14 year after construction, 4 named major storms, and no owner maintenance performed, the townhomes have held up well and have little to no interior or exterior damage. The townhomes' roofs, siding, and windows are performing as their intended purpose. The arbitrator agreed there had been no failure of the three components. Exhibit Y, 7/31/2023 Tr. pp. 274 lines 20-24 and 279 lines 7-9. Additionally, there was much testimony by experts for both Plaintiff and D.R. Horton regarding whether the siding was required to be adhered to the framing studs or whether the siding could be adhered to the sheathing because the buildings included thicker sheathing such that the manufacturer installation instructions allowed for the siding to be adhered to the sheathing. Exhibit Y, 7/31/2023 Tr. pp. 171-172; 133-135; 213-214; 219. Exhibit X, 7/26/2023 Tr. pp. 25; 27; 38-39; 120. The rationale is that the more heavy-duty sheathing that is attached to the framing studs becomes part of the structural framing and is therefore suitable to attach siding to it. Which is what the siding contractor did. Plaintiff's expert did not dispute this specific circumstance, but instead focused on the fact that chalk lines were not run. Exhibit X, 7/26/2023 Tr. pp. 38-39. Of course, such lines are not

[10] That is the standard because even if the subcontractors were negligent, their conduct does not automatically mean D.R. Horton was negligent. *Fields v Haynes Builders*, 658 S.E.2d 80 (S.C. 2008). Moreover, minor code violations do not alone amount to gross negligence for the purposes of the Statute of Repose. S.C. Code 15-3-670 (B) (code violations do not automatically indicate gross negligence).

required by any building code or statute and are meaningless when attaching siding to the more heavy duty sheathing that D.R. Horton uses. There was also expert testimony on both sides debating whether the windows were either usable or not useable with the cement fiber board siding, were fine as they were, or that their installation needed to be modified. Exhibit Y, 7/31/2023 Tr. p.116; 143; 146. Exhibit X, 7/26/2023 Tr. pp. 51; 79; 193. Plaintiff's expert agreed that the windows were usable with the installed siding. Exhibit X, 7/26/2023 Tr. p.p. 109; 134; 193.

Agreement among the witnesses and experts, and the functioning of the buildings for 12-14 years, demonstrates that gross negligence was absent, but the only avenue available to overcome the statute of repose was to find gross negligence.

The Federal Arbitration Act applies because the building and sale of the townhomes affect interstate commerce as discussed below. To the extent that federal law and South Carolina diverge in this case, federal law preempts South Carolina law. In many respects, for this case, the law is substantially the same.

A reasoned award was agreed upon, which required the arbitrator to issue a reasoned award. A reasoned award was not issued, except as to gross negligence.

I. The Plaintiff Lacks Standing and Is Not A Real Person in Interest

a. The Arbitrator Manifestly Disregarded the Law When He Failed to Grant D.R. Horton Summary Judgment And Apply Basic Contract Law

The Federal Arbitration Act (FAA) applies to arbitrations that affect interstate commerce. D. R. Horton is incorporated in Delaware with a principal place of business in Texas. It develops housing developments across the United States using building materials, human resources, and financing in interstate commerce throughout the country for the Mansfield development and its

other developments throughout the country. In *Damico v. Lennar Carolinas, LLC*, the South Carolina Supreme Court held that "the transactions here manifestly involve interstate commerce, as they involved the construction of new homes built to Petitioners' specifications rather than the purchase of pre-existing homes. *See, e.g., Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 458 n.8, 730 S.E.2d 312, 318 n.8 (2012) ("[O]ur appellate courts have consistently recognized that contracts for construction are governed by the FAA."); *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977) (explaining that contracts requiring the construction of a new building implicate interstate commerce because it would be "virtually impossible" to construct the building "with materials, equipment[,] and supplies all produced and manufactured solely within the State of South Carolina")" *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 608, 879 S.E.2d 746, 753 (2022). To the extent that federal law and South Carolina diverge in this case, federal law preempts South Carolina law. In many respects, for this case, the law is substantially the same.[11] *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977)

The FAA provides the statutory grounds for vacating an arbitrator's award. *See* U.S.C. Section 10. Applicable to this case is (4) which provides for an award to be vacated where the arbitrators exceed their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. 9 U.S.C. Section 10(a) (4). The South Carolina arbitration statute also requires an arbitrator's award to be vacated when the arbitrator exceeds his powers. S.C. Code Section 15-48-130 (2016). Additionally, South Carolina provides for a non-statutory basis to vacate an award: manifest disregard or perverse misconstruction of

[11] The agreement to arbitrate, Exhibit D, provides that the selection of the arbitrator would be under South Carolina law.

the law, which occurs when an arbitrator "knew of a governing principle yet refused to apply it." *Gissel v. Hart*, 382 S.C. 235, 241-42, 676 S.E.2d 323-24 (2009).

While "[a]rbitration is a favored method of settling disputes in South Carolina," *Gissel v. Hart,* 382 S.C. 235, 241, 676 S.E. 2d 320, 323 (2009), "[a]n arbitration award may be vacated when the arbitrator exceeds his or her powers or manifestly disregards or perversely misconstrues the law. *Id. See also Weimer v. Jones*, 364 S.C. 78, 80, 610 S.E.2d 850, 852 (Ct. App. 2005). This basis "for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Gissel v. Hart,* 382 S.C. 235, 241-42, 676 S.E. 2d 320, 323-24 (2009); *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013); *Trident Technical College v. Lucas and Stubbs,* 286 S.C. 98, 333 S.E.2d 781 (1985). In circumstances where the court is asked to vacate an arbitration award for "manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." *Gissel at.* at 323-24, 676 S.E.2d at 241-42. "Factual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers. *Id.* at 324; 676 S.E.2d 242. An arbitrator gains his authority from agreement of the parties and an award must be vacated when the arbitrator does not comply. *See, e.g., Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co.,* 232 F.3d 383, 389 (4th Cir. 2000).

The court applied these principles in *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 55-59, 742 S.E.2d 359, 359-362 (2013), wherein the Court held that the arbitrator's failure to grant a motion to dismiss amounted to manifest disregard. ["T]he arbitrator erred in failing to grant Petitioners' motion to dismiss based upon the affirmative defense of section 40-11-370. Despite such error, Respondent seeks refuge in the narrow standard of manifest disregard. Indeed,

manifest disregard is an exacting standard, but it is not insurmountable." *See, e.g.*, *N.Y. Tel. Co. v. Commc'ns Workers of Am. Local 1100*, 256 F.3d 89 (2nd Cir. 2001) (affirming district court's vacating arbitration award where arbitrator manifestly disregarded the law by explicitly rejecting precedent of the Second Circuit and relying on opinions outside of the Circuit); *Montes v. Shearson Lehman Bros., Inc.*, 128 F.3d 1456 (11th Cir. 1997) (finding lack of indication that arbitrators rejected party's express urging to disregard the law necessitated reversing affirmance of the arbitration award); *Spear, Leeds & Kellogg v. Bullseye Sec., Inc.*, 291 A.D.2d 255, 738 N.Y.S.2d 27 (N.Y. App. Div. 2002) (finding that because individual claimants, as a matter of law, cannot assert a cause of action to recover for wrongdoing done to a corporation, the rendering of award based on such a claim was properly vacated as manifest disregard of the law); *Wichinsky v. Mosa*, 109 Nev. 84, 847 P.2d 727 (Nev. 1993) (finding arbitrator demonstrated a manifest disregard of the law by awarding punitive damages in the absence of clear and convincing evidence of fraud, oppression or malice).

The *C-Sculptures* court held that "the governing law ignored by the arbitrator [is] well defined, explicit, and clearly applicable[,]" and consequently, the manifest disregard standard has been met. *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 58-59, 742 S.E.2d 359, 361-362 (2013). In this case, the arbitrator also ignored well defined, explicit, and clearly applicable law when he failed to grant D.R. Horton's motion for summary judgment that Plaintiff lacked standing and was not the real party in interest. Accordingly, like the Petitioners in *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 55, 742 S.E.2d at 360, D.R. Horton seeks relief from the award.

The arbitrator knew of the clearly applicable legal principle that courts shall grant summary judgment if the conditions for such relief are met and that courts shall enforce contracts as they are written. The standard for summary judgment is well-known and well-understood

among judges, lawyers, and arbitrators. Rule 56(c) of the South Carolina Rules of Civil Procedure ("SCRCP") requires that summary judgment be granted:

> if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Rule 56(c), SCRCP. In determining whether summary judgment is proper, the Court must view all evidence in the light most favorable to the non-moving party. *Bar v. City of Rock Hill*, 330 S.C. 640, 642, 500 S.E.2d 157, 158 (Ct. App. 1998). Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001).

A party seeking summary judgment has the initial burden to demonstrate the absence of a genuine issue of material fact. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This burden may be met by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. *Id.* (citing *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial." *Id*. (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586-87 (1986)). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *George v. Empire Fire & Marine Ins. Co.,* 545 S.E.2d 500 (S.C. 2001). More than a mere scintilla is required to overcome summary judgment. *Bravis v. Dunbar*, 449 S.E.2d 485 (S.C. App. 1994).

D.R. Horton met the standard for summary judgment and Plaintiff did not demonstrate

any genuine issue for trial regarding Plaintiff's lack of standing as a real party in interest in this case. The issue should have been resolved using basic contract law. The facts are straightforward. The homeowners are deeded the interior and exterior of their specific units and they are individually responsible for the maintenance to the interior and exterior of their townhomes. Pursuant to the CCRs for Mansfield at Park West, the individual homeowners have the right and obligation to maintain and repair the units. The original CCRs provide that:

> Each Owner shall maintain his or her Unit and all structures, parking areas, backyards and other improvements comprising the Unit in a manner consistent with the standards of Mansfield at Park West and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association[.]
>
> ... Each Owner's maintenance responsibility shall include, but shall not be necessarily limited to, the following:
>
> (b) maintenance, repair, and replacement as necessary of the exterior surfaces of the Units ... and,
>
> (e) maintenance, repair and replacement as necessary of the roof including shingle and roof decking of the Unit.

Exhibit B, CCRs, § 5.2. Notably, the Plaintiff has zero right, obligation or responsibility to do any of the above, and the amendment does not even change that. The amendment was done only to be an expedient way to circumvent the townhome owners having to prove facts for entitlement on each of their units and to evade the limits on class action arbitration. Based on the foregoing, the homeowners would be the real parties in interest. Moreover, Plaintiff agreed that no amendment to the CCRs has changed the homeowners' obligation to repair and maintain the exterior, roof, and fencing. Exhibit P, (30(b)(6) Depo. of Plaintiff, 23:15-24:5, 25:22-26:10, 27:11-17, 52:9-53: 1, 60:18-22, 61:3-8, 76:5-9).

Plaintiff attempted to imbue itself with standing by modifying the CCRs in the Second

Amendment; however, the CCRs itself prohibit application of any such modification for three years from the date an amendment is recorded. Additionally, any amendment pursuant to §18.1 may not be made until *after* the initial twenty-year term, which does not expire until September 20, 2027. Section 18.1 provides that:

> The covenants and restrictions of this Declaration shall run with and bind the land . . . until September 30, 2027, unless otherwise expressly limited herein, *after which time* said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, *agreeing to change* said covenants and restrictions in whole or in part. Provided, however, that *no such agreement to change* shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. (Emphasis added).

The CCRs provide that an amendment to change the covenants and restrictions in whole or in part will **not** be effective until after the initial twenty-year term and not "unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken." Exhibit B and C, CCRs, §18.1.The CCR contract by and among D.R. Horton and every homeowner at Mansfield at Park West, specifically allows amendments, but those amendments do not take effect until September 30, 2027 and three years after the amendment is recorded. *See* Exhibit B and C, §18.1.[12] This a simple and basic.

The amendment the HOA uses to attempt to acquire standing in this case was passed on March 1, 2021, just *three days* before the lawsuit was filed. The amendment purported to provide that "at its sole discretion [Plaintiff] shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and

[12] The CCRs, in a separate provision, also allows D.R. Horton to amend the CCRs under certain conditions, not applicable here. Exhibits A, B, and C, § 18.2.

installation thereof[.]" Exhibit A, § 5.1. Such an amendment may only be applied prospectively, three years after the amendment is recorded by the terms of the CCRs and after the initial twenty-year term.[13] Accordingly, Plaintiff is not, and for three years after September 30, 2027 cannot be, the plaintiff in the case and it does not have standing to bring the case as a real party in interest. Applying the modification to this case violated the very CCRs that Plaintiff uses to attempt to create standing. Additionally, because the townhome owners retained all rights and obligations to maintain and repair the interior and exterior of each townhome, including their individual roofs, the putative Plaintiff had no legitimate interest in the lawsuit – no obligation to repair, replace, or modify any building components, no obligation to provide any lawsuit funds to any individual townhome owner, and no obligation to disburse the funds in anyway. The Plaintiff simply has no real stake in the lawsuit and no right to damages for which it has suffered no harm. Rule 17(a), SCRCP requires that every action be brought by the real party in interest to have standing. "Generally, a party must be a real party in interest to the litigation to have standing." *Sloan v. Friends of Hunley, Inc.,* 369 S.C. 20, 28, 630 S.#. 2d 474, 479 (2006). "Standing is a fundamental requirement in instituting an action." *Hawkins v. Hammond*, 437 S.C. 36, 43, 875 S.E. 2d 60, 63 (Ct. App. 2022). A real party in interest is "the party who, by the substantive law, has the right sought to be enforced. It is ownership of the right sought to be enforced which qualifies one as a real party in interest." *Bank of Am. , N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013). That is not this Plaintiff. Plaintiff has not been harmed, has no obligation to use any proceeds from the lawsuit for the benefit of the real parties in interest, and attempted to insert itself into this lawsuit through breach of an agreement. Plaintiff is not a real party in interest. "[A] party's lack of standing as a real party in interest

[13] Prospective amendment requirements in CCRs, like the initial twenty-year term and three-year prior notice in this case, allow parties to prepare for any upcoming changes.

deprives a court of subject matter jurisdiction." *Bardoon Properties v. Eldolon Corp., 326 S.C. 166, 485 S.E.2d 371, 373 (1997).*

D.R. Horton moved for summary judgment on this issue, Exhibits F, G, and H, and argued the issue in its pre-hearing brief, Exhibit I, and at the arbitration hearing as well. Exhibit Y, 7/31/2023 Tr. pp. 314 line 12 – 326 l4. There was no unresolved factual question to preclude the arbitrator from granting summary judgment to D.R. Horton.

The law is also clear and well defined on this issue. Contracts in South Carolina are to be enforced. *See e.g., Jordan v. Security Group, Inc.,* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). "Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Id.* Sound public policy demands that courts enforce contracts. Likewise, sound public policy requires that arbitrators not be allowed to dispense their own contract nullification proclivities over basic contract law. South Carolina and federal law favor arbitration; however, it is the parties who generally decide whether to arbitrate. If arbitrators are permitted to ignore basic contract law with a cursory conclusory statement that makes no attempt to interpret or enforce the contract, commercial entities will choose anything but arbitration for their dispute resolution needs. In this case, the arbitrator was aware of the contract. The arbitrator was aware of the law. The arbitrator failed to grant D. R Horton summary judgment before the arbitration hearing when it should have done so. The arbitrator failed to apply clear and well-defined South Carolina law that contracts are to be enforced when he failed to enforce the CCRs and when he failed to grant D.R. Horton summary judgment on the

issue of Plaintiff's standing and real party in interest – all in manifest disregard or perverse misconstruction of the law.[14]

The Plaintiff, the townhome owners, and their counsel colluded to amend the CCRs to attempt to imbue the Plaintiff with standing as a subterfuge to overcome the fact that they could not bring a class action in arbitration. The United States Supreme Court decided that parties cannot be forced to arbitrate class claims unless they have specifically agreed to that issue. *Lamps Plus. Inc. v. Varela*, 139 S.C. 1407 (2019).The second amendment to the CCRs was a thinly veiled end run evade around restrictions on class actions in arbitrations.[15]

D.R. Horton requests that the Court vacate the award and dismiss the case for lack of standing and lack of a real party in interest, as the arbitrator should have done. Then the Court need not reach any of the other issues herein.

b. The Arbitrator Failed to Issue a Reasoned Award and Thereby Exceeded His Authority and Manifestly Disregarded the Law

Under the same facts and law discussed above, the arbitrator also exceeded his authority and manifestly disregarded the law when he failed to address the issue of standing and real party in interest in his award in anything more than a cursory conclusory statement. A conclusory statement is not a reasoned award, especially as to an issue that was thoroughly discussed in the arbitration proceedings, as the issue of standing and real party in interest was in this case. Exhibit Y, 7/31/2023 Tr. pp. 314 line 12 – 326 line 4. and Exhibit E. *See Stage Stores, Inc v. Gunnerson,* 477 S.W.3d 848 (Tex. App. 2015) (finding that an award was not a reasoned award when it

[14] While Plaintiff argued that D.R. Horton lacks standing to challenge the Second Amended CCRs at issue here, this position is contradicted by the terms of the CCRs. The CCRs explicitly provide D.R. Horton, the Declarant, rights in the CCRs. Exhibits A, B, and C, CCRs, § 1.2.

[15] The HOA also amended the dispute resolution provision in violation of the CCRs. D.R. Horton has rights under that provision. Compare CCR §§ 17.1-17.6 in Exhibit B with Second Amended CCR Article XVII in Exhibit A.

failed to discuss an issue that was thoroughly discussed during the arbitration proceedings). Rejecting language like the cursory language in the award in this case, the *Leeward Const.* court held that the conclusory statement: "having heard all of the testimony, reviewed all of the documentary proofs and exhibits, [the arbitrator does] not find support for STI's claims. . . ." was not a reasoned award. *Leeward Const. Co., Ltd. V. Am. Univ. of Antigua-College of Medicine,* 826 F.3d 634, 640 (2nd Cir. 2016).

Likewise, the standing and real party in interest issue in this case is significant and warranted more than just a conclusion. Like the *Leeward Const.* conclusory statement, the award here stated only:

> I have reviewed the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West , along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. I find the Plaintiff has standing to pursue the claims it has asserted.

The foregoing is a mere recitation of what the arbitrator said he considered and a conclusory statement. There is no reasoning. There is no discussion about the fact that the contract between the parties does not allow the Second Amendment to be effective until after September 30, 2027 and three years after it is recorded, that the Plaintiff has suffered no harm and has no damages and that the Plaintiff has no duty or obligation, to modify or repair the townhouses.

An arbitrator gains his authority from agreement of the parties. *See, e.g., Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co.,* 232 F.3d 383, 389 (4th Cir. 2000) ("[w]hen, as here, the award does not draw its essence from the governing agreement, and the arbitrator has exceeded his authority under the agreement, courts have no choice but to refuse enforcement of the award"). In this case, the parties agreed to a reasoned award. But when the arbitrator failed to provide a reasoned decision regarding standing and real party in interest, he exceeded his authority and manifestly disregarded the law because he had no authority to issue

an award without a reasoned decision as to all the significant issues in the case. The issue is discussed thoroughly in *Vold v. Broin & Assocs.* 2005 S.D.80, 699 N.W.2d 482 (S.D. 2005):

> Arbitrators possess broad, but not unlimited, authority. *Missouri River Servs., Inc. v. Omaha Tribe of Nebraska*, 267 F.3d 848, 855 (8thCir 2001) (following *Trailmobile Trailer, LLC v. Int'l Union of Electronic, Electrical, Salaried, Mach. & Furniture Workers, AFL-CIO*, 223 F.3d 744, 747 (8thCir 2000)). Grounds for vacating an arbitration award are provided in the Federal Arbitration Act (FAA). 9 USC § 10 (2002). Section 10 of the FAA lists several bases for vacating an arbitration award. In addition, circuit courts may also vacate arbitration awards that are "completely irrational" or that "evidence a manifest disregard for the law." *Hoffman v. Cargill Inc.*, 236 F.3d 458, 461 (8thCir 2001) (alteration and citation omitted). . . .
>
> An arbitration award can be set aside when the arbitrator "exceeded [his] powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 USC § 10(a)(4). This award exceeded the arbitrator's powers because the arbitrator violated the rules he agreed to follow. *See generally Gas Aggregation Serv., Inc. v. Howard Avista Energy, LLC,* 319 F.3d 1060, 1068- 69 (8thCir 2003) (stating that an arbitration decision evinces a manifest disregard for the law when it identifies a substantive rule and then proceeds to ignore it). . . .
>
> "Substantive law" "creates, defines, and regulates the rights, duties, and powers of the parties." *Id.* at 1443. Vold contends that the "arbitrator determined that he had no duty under the AAA Construction Industry Arbitration Rules to render a 'reasoned' award." Are we to conclude, then, that the arbitrator, after issuing his written order, simply had the power to change his mind without notice or explanation? Once the arbitrator ordered that the award he would issue would be reasoned, his powers were defined. The arbitrator's decision to issue a reasoned award bestowed a substantive right on Broin and, at the same time, imposed a substantive duty upon the arbitrator.

An arbitrator exceeds his powers if the issue resolved by him is not within the scope of the agreement to arbitrate. Any award other than a reasoned award was outside the scope of the arbitration. The South Carolina Code of Ethics for Arbitrators, Canon I (F) supports the rights of parties to an arbitration to receive the type of award the parties agree should be issued. Canon I (F) requires that "[w]hen an arbitrator's authority is derived from an agreement of the parties, the arbitrator should neither exceed that authority nor do less than is required to exercise that

authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules." The Code of Ethics is not just aspirational, advisory, or voluntary. It is required by the South Carolina Alternative Dispute Rules. Rule 1 of the SC ADR Rules says that the SC ADR Rules apply to arbitrations in the state. Rule 21 (b) of the SC ADR Rules says that the Code of Ethics applies to arbitrators. As part of the South Carolina Rules of Civil Procedure, Canon I (F) is mandatory. In this case, the arbitrator had the obligation to render a reasoned award as to all significant issues within the case. It was not within the scope of the arbitration for the arbitrator to issue anything less than a reasoned award. Accordingly, the arbitrator exceeded his authority and manifestly disregarded the law when he failed to render a reasoned award as to standing and real party in interest.[16]

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[16] In addition, the Second Amendment also removed the entire section entitled "**Dispute Resolution and Limitation on Litigation**" (the "Original Dispute Resolution Provision"). The Original Dispute Resolution Provision provided procedures that any of the bound parties had to follow in order to bring a claim related to an alleged construction defect. Exhibit B, CCRs, § 17.1-17.6. The Original Dispute Resolution Provision provided that "[D.R. Horton] shall have the right to meet in good faith and discuss the subject of the proceeding with the Owners, or the particular Owner, and to access, inspect, correct the condition of, or redesign any portion of the Community, including any improvement as to which a defect is alleged." (Id., § 17.1). It is undisputed that this did not occur.

Moreover, the Original Dispute Resolution Provision provided the following procedure for bringing construction defect claims:

- notice of claim in writing;
- the parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation;
- if such meeting is unsuccessful, then the claimant must submit the claim to mediation; and
- if the mediation is unsuccessful, then the claimant must submit the claim to arbitration.

(CCRs, § 17.4).

In place of the Original Dispute Resolution Provision, the Second Amendment inserted the following:

> **ARTICLE XVII**
> **Dispute Resolution**
>
> Any dispute between the Association and the Declarant shall be submitted to binding arbitration with a single arbitrator agreed to by the parties or appointed by the Court. The arbitrator shall have the sole discretion to determine the rules and procedures of the arbitration and any law applicable thereto. The award of the arbitrator shall be final and binding.

II. The Arbitrator Failed to Issue a Reasoned Award and Thereby Exceeded His Authority and Manifestly Disregarded the Law Regarding All Damages Issues

The arbitrator awarded a very specific amount of damages: $ 3,057,112.48. The arbitrator awarded this precise lump-sum in damages to Plaintiff without any reasoning or explanation. The arbitrator spent three pages on the combined issues of statute of repose and liability, but only a single conclusory sentence as to damages. One sentence. The arbitrator failed to provide a reasoned award as to damages, exceeded his authority and manifestly disregarded the law. The law discussed above regarding reasoned awards applies here, as well. As discussed in the facts section above, the damages issue presented to the arbitrator was more complex than a simple number. D.R. Horton made the arbitrator aware of the multi-faceted considerations throughout the arbitration and in pre-arbitration briefing. D.R. Horton *asked the arbitrator to clarify damages portion of the award*, which the arbitrator denied without explanation. Clarifying the damages portion of the award would have taken nothing from the Plaintiff but would have provided D.R. Horton the information it needs to address the issues with its contractors and subcontractors.[17]

Courts have rejected lump sum awards, like the one the arbitrator awarded, as the basis for a developer seeking contribution, indemnification, and other remedies from

> To the extent that there is any provision in the Declarations that conflict with this Amendment, the terms of this Amendment shall govern. The Board of the Association shall have the right to give the final meaning and interpretation of any term of the Declaration and Amendments thereto and shall have the right to modify any provision for which it determines impedes it from fulfilling its duties and obligations to the members of the Association provided that a least two-thirds (2/3) of the Board votes in favor of such interpretation and/or modification.

(the "Amended Dispute Resolution Provision"). Based on the Second Amendment, Plaintiff contends that it does not have to comply with the requirements laid out in the Original Dispute Resolution Provision. The CCRs expressly state that D.R. Horton has the right to enforce the CCRs and any amendments or supplements until 2027. (*See* CCRs, § 1.2). D.R. Horton has been denied its rights.

[17] S.C. Independent Contractor Agreements, Exhibit Q.

negligent contractors and subcontractors. In *D.R. Horton, Inc. v. Builders FirstSource – Se Grp., LLC*, 422 S.C. 144, 810 S.E.2d 41 (S.C. App. 2018), the Court decided that "[b]ecause the verdict was a general verdict it is impossible to determine how the jury allocated damages" and that "an unreasoned award for damages only, proves fatal to D. R. Horton's claim for indemnification." *Id.* at 153. D. R. Horton's request for a reasoned award on this issue was not frivolous or disrespectful – it was a necessary part of the arbitration award that D.R. Horton was denied for no justifiable reason.

The arbitrator obviously performed some sort of calculation to reach an award that ended in 48 cents, but for some reason unbeknownst to D. R. Horton refused to provide a reasoned award on this issue. The siding, roofs, and windows were not installed by the same contractors and subcontractors, which means D.R. Horton needed a reasoned award as to the damages. Denying a reasoned award as to damages "punishes" D.R. Horton beyond the boundaries of the scope of the arbitration by denying it any ability to seek resolution with its contractors and subcontractors.

The damages question was multi-faceted, but the arbitrator failed to provide reasoning as to any of the damages issues. The arbitrator's lump-sum award was without any specification as to how the damages awarded were connected to or caused by the alleged breach of duty. The testimony by both the Plaintiff's and D.R. Horton's experts and acknowledgement by the arbitrator disclaimed any significant damage to any of the townhomes resulting from any alleged defects in the design, materials, or installation of the roofs, siding, or windows. Exhibit Y, 7/31/2023 Tr. pp. 110-111; 112; 113; 114; 115; 137-38; 142-43; 146; 274 lines 20-24; 279 lines 7-19. Exhibit X, 7/26/2023 Tr. pp. 94;105; 107; 109;

190; 193; 195. How are the damages awarded causally connected to the alleged code violations for 12–14-year-old buildings that have sustained no significant damage? Was it calculated to repair the buildings or to replace building components?[18] We do not know because the arbitrator did not issue a reasoned award on this issue or any other damage issue.

The arbitrator's lump-sum award excluded any itemization as to how the damages were calculated or apportioned among the alleged issues with the roofs, siding, and windows. All that was provided was a lump-sum number. In order to seek contribution or indemnification from contractors and subcontractors, D.R. Horton needs to know how the damages were itemized and requested an apportioned award in its proposed order and again in its motion to clarify. It seems the arbitrator performed a precise calculation because he awarded a specific amount to the penny rather than a round $3 million award. Why has the calculation not been provided for what is supposed to be a reasoned award? The arbitrator did not issue a reasoned award on this issue or any other damage issue.

The arbitrator's damages award provided no clarification as to any offset or mitigation that was or was not applied against the damages. The lack of such reasoning in the award is significant. The fact that the townhome owners had the beneficial use of the building components for 12-14 years was discussed during the arbitration and in pre-arbitration briefing. Exhibit I; Exhibit Y, 7/31/2023 Tr. pp. 111; 112; 114. The arbitrator's award speaks of a set-off for the roofs due to the years of service the roofs protected the townhomes and

[18] There was ample evidence that repair by face nailing and repainting the siding would comply with the installation guidelines and would be appropriate in a high wind area. Exhibit Y, 7/31/2023 Tr. pp. 131-133; 137. Window modifications, if needed, were also discussed and confirmed. Exhibit T, 7/31/2023 Tr. pp. 116; 117; 143;145-46. Repairs rather than wholesale replacement is a more appropriate resolution and one contemplated by the CCRs dispute resolution procedure.

their life expectancy; however, the award does not specify the amount of the roof set-off or how it was calculated. Did the arbitrator use a depreciated value? We do not know because the award is just a number. The award also does not provide information as to whether the one roof that had recently been replaced with an insurance payout due to hail damage was excluded from damages for that building component. Exhibit X, 7/26/2023 Tr. p. 105. Awarding damage on that issue would be an undeserved windfall. Was that roof excluded? We do not know because the arbitrator declined to tell us.[19]

The award is also silent as to any set-off for the siding or windows. The homeowners had the use of the windows and siding for 12-14 years without any significant damage. The award does not provide any information as to any set-off. Did the arbitrator apply a set-off? If so, did the arbitrator use a depreciated value? We do not know because the arbitrator declined to tell us.

The arbitrator's award is also silent as to all the townhomes that had been sold by original owners during the 14 years since they had been built. The Homeowner Surveys show that many of the townhomes changed ownership since they were originally purchased. Exhibit R.[20] Were damages awarded to these downstream purchasers, and if so, on what legal basis? We do not know because a reasoned award was not provided.

D.R. Horton filed a motion for clarification regarding the damages award, which the arbitrator denied. Exhibits M and N. The arbitrator failed to provide a reasoned award as to

[19] One homeowner filed an insurance claim for hail damage to the roof. These are 6 buildings for 28 townhomes. They share roofs. If one had hail damage, they all did. The insurance company paid for a new roof, which substantiates the hail damage. Why did the other townhome owners not seek similar claims as they were required to maintain their roofs? There was no evidence that any exterior maintenance was performed by any homeowner over the 12-14-year period of ownership except limited fence repairs and the one homeowner who replaced the hail damaged roof. Exhibit X, 7/26/2023 Tr. p. 105; Exhibit R. And despite NO owner maintenance, the building components performed.

[20] Original purchasers purchased in the 2010 timeframe. The surveys show many ownership changes in the 2019-2022 timeframe. These surveys show almost no exterior maintenance by homeowners.

each of the foregoing damages issues, exceeded his authority, and manifestly disregarded the law. The arbitrator's refusal to disclose the damages reasoning is concerning and confusing. It certainly devalues arbitration as a dispute resolution mechanism.

Just as a conclusory statement is not a reasoned award, especially as to an issue that was thoroughly discussed in the arbitration proceedings, a lump sum damage award that fails to discuss anything at all about the damages is not a reasoned award. *See Stage Stores, Inc v. Gunnerson,* 477 S.W.3d 848 (Tex. App. 2015) (finding that an award was not a reasoned award when it failed to discuss an issue that was thoroughly discussed during the arbitration proceedings). A lump sum damages award in this type of case that involved years of use of the building components and three different building components is less reasoned than the conclusory statement in *Leeward Const.* was. *Leeward Const. Co., Ltd. V. Am. Univ. of Antigua-College of Medicine,* 826 F.3d 634, 640 (2nd Cir. 2016). It is hard to imagine how a damages award could be less reasoned than the lump sum award in this case.

A reasoned award in an arbitration proceeding is supposed to provide the parties with an understanding of the components of the award as to the significant issues in the arbitration. That is the job the arbitrator agrees to perform when a reasoned award is agreed to by the parties. As discussed in the standing and real party in interest section above, an arbitrator gains his authority from agreement of the parties and is bound by Canon I (F). In this case, the parties agreed to a reasoned award. When the arbitrator failed to provide a reasoned decision regarding damages, he exceeded his authority and manifestly disregarded the law because he had no authority to issue an award *without* a reasoned decision. An arbitrator exceeds his powers if the issue resolved by him is not within the scope of the agreement to arbitrate. Any award other than a reasoned award was outside the scope of the arbitration. A precise lump sum number ending in 48 cents in a

complex damages case is not a reasoned award. This is especially true in a construction defect case when the developer needs the clarity to pursue its rights as to the contractors and subcontractors who performed the installations.

The arbitrator also failed to comply with the South Carolina Supreme Court's Code of Ethics for Arbitrators. Canon I (F) requires that "[w]hen an arbitrator's authority is derived from an agreement of the parties, the arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules." In this case, the arbitrator had the obligation to render a reasoned award as to all significant issues within the case. It was not within the scope of the arbitration for the arbitrator to issue anything less than a reasoned award, which he failed to do as to all damages issues. Even when D.R. Horton requested clarity as to the damages award, the arbitrator denied D.R. Horton a reasoned award.

III. The Arbitrator and Manifestly Disregarded the Law Regarding Damages Because The Damages Are Speculative

Plaintiff argued it is entitled to damages because the building systems might fail in the future. However, that argument is speculative and any damages arising therefrom after 12-14 years of use of the building are also speculative. What if the components never fail before the expected life of the components is reached and Plaintiff is given a windfall? The roofs are already very close to their expected lifespan. Exhibit Y, 7/31/2023 Tr. pp. 111-112. The limited warranty on the siding is 15 years. Exhibit W. Whether each component was installed in strict compliance with the building code or not – the components are meeting the intent of the building codes. The Homeowner surveys, which shows very little maintenance done by

homeowners also shows that even without maintenance the components are performing their intended purposes.

In *56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.*, 769 SE2d 242 (Ct. App 2014), the court looked at the issue of speculative damages and whether they constitute real damages. The court noted:

> Speculative damages are damages that depend upon future developments which are contingent, conjectural, or improbable. As a general rule, courts will find that all damages must be susceptible of ascertainment with a reasonable degree of certainty, and that uncertain, contingent, or speculative damages cannot be recovered in any action ex contractu or ex delicto.
>
> The inability to measure damages with definite exactness does not make them speculative and does not bar recovery. The general rule is the same, whether the plaintiff seeks lost profits in a contract case or future medical expenses in a tort case: damages must be proved with reasonable, not mathematical, certainty, and no award can be made for speculative or conjectural damages.
>
> Thus, where future injury is only merely possible, rather than probable, or where the amount is speculative rather than reasonably certain, the plaintiff cannot recovery.

Leinbach at 249 (citing 11 S.C. Jur. Damages section 5 (1992) (footnotes and quotations omitted)).

This is central to this case. Other than evidence of work not being in strict compliance with the building code, Plaintiff did not present evidence of any causal connection between the defective work and any damages. Plaintiff's liability expert recommended replacement, not repair. Plaintiff's damages witness also only presented the costs to *replace* the siding, roofs, and windows (although there was no testimony that there was anything wrong with the windows, siding, or roofs themselves). If no damage has occurred in the 12-14 years of use, then replacement would not be the fair measure of damages. But more importantly, if no damage has occurred in 12-14 years of use, then the deviations from the building code or manufacturer's

installation instructions clearly were not severe enough to degrade the effectiveness of the systems: the systems are working.

In *South Carolina Federal Sav. Bank v. Thornton-Crosby Dev. Co.*, 1990 S.C. App LEXIS 155, the court held that, "[t]he estimation of damages, however, cannot be based on opinion not founded on fact and must rest on evidence from which a reasonably accurate conclusion regarding the amount of loss can be logically and rationally drawn." (citing *The Drews Company, Inc. v Ledwith-Wolfe Associates, Inc.*, 317 SE2d at 536 (1988)). Plaintiff did not do this. The buildings have not allowed water intrusion or component failure through many years and at least four named storms and a Category 1 hurricane. The causal connection between alleged building code violations and damages is absent.

In a similar situation in Colorado, *Anderson v. Apex Roofing Consultants, LLC*, 2017 Colo. Dist. LEXIS 1276, the court focused on whether the multiple code violations found by the Plaintiff's expert were themselves damages when no resulting damage was proven. The court noted that the Colorado statute bars a negligence claim based solely on the grounds of failure to substantially comply with the applicable building codes or industry standards. *Apex Roofing* at 16. Instead, the Colorado statute requires *actual* damage to real or personal property, *actual* loss of use or bodily injury or wrongful death. *Apex Roofing* at 16-17.

The *Apex Roofing* case concluded that even if the Plaintiff's expert had testified that a building code violation was present, the undisputed expert testimony at trial established, "there was no water intrusion or any other water-related damage near, under or even associated with any of the defects in the roof installation." *Apex Roofing* at 18. The court concluded that "Plaintiffs failed to meet their burden of establishing that they suffered any actual damage over the past five years, to their real or personal property in connection with the alleged violations of

the building code and/or industry standards related to the installation of the roof by Defendant." *Apex Roofing* at 20.

Like the plaintiffs in *Apex* Roofing, Plaintiff, its experts, and even the arbitrator, all agreed there was not damage to the buildings from the alleged building code violations. While South Carolina does not have an analogous statute to Colorado, South Carolina law is clear that damages must be proven and not speculative. The holding in *Apex Roofing* is consistent with South Carolina law. Contract and negligence claims require damages. The siding, roofs, windows have not caused damages.

The arbitrator manifestly disregarded the law when he awarded speculative damages without a causal connection between the alleged violation of the duty of care and any damage to the buildings and he failed to issue a reasoned award on this issue.

IV. The Arbitrator and Manifestly Disregarded the Law When He Found D.R. Horton Was Grossly Negligent.

Under South Carolina law, "ordinary negligence, gross negligence, and reckless, willful, or wanton conduct" are all forms of actionable conduct falling along a continuum of negligence that stops short of conduct amounting to an intentional tort. *Pier View Condo. Ass'n v. Johns Manville, Inc.*, Civil Action No. 2:18-22-BHH, 2022 U.S. Dist. LEXIS 38602, *16-17 (D.S.C. Mar. 4, 2022) (quoting *Berberich v. Jack*, 392 S.C. 278, 709 S.E.2d 607, 615 (2011)). "Gross negligence is defined as the 'failure to exercise slight care,' or 'the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Pier View Condo. Ass'n v. Johns Manville, Inc.,* Civil Action No. 2:18-0022-BHH, 2021 U.S. Dist. LEXIS 29438, at *21 (D.S.C. Feb. 17, 2021) (quoting *Toney v. LaSalle Bank Nat. Ass'n*, 896 F. Supp. 2d 455, 479-80 (D.S.C. 2012)). "If a person of ordinary

reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning – the conscious failure to exercise due care." *Pier View Condo.'Ass'n v. Johns Manville, Inc.*, Civil Action No. 2:18-0022-BHH, 2021 U.S. Dist. LEXIS 29438, at *22 (D.S.C. Feb. 17, 2021) (quoting *Berberich v. Jack*, 709 S.E.2d 607, 612 (S.C. 2011)). The facts and law do not support the arbitrator's finding of gross negligent. The arbitrator manifestly disregarded the law.

When you consider the standard of gross negligence, which means "not even the slightest of care" mass failure after 12-14 years would be expected. No failure, which is what we have in this case, is evidence of perhaps imperfect, but adequate performance. It is a complete perversion of why the Legislature adopted a Statute of Repose and set limitations if gross negligence is found in this type of situation. Plaintiff's expert testified that perfection is not the standard. Exhibit X, 7/26/2023 Tr. p. 87. Damages are a critical element of contracts and torts. Gross negligence should be the rare exception and should not be used to circumvent the Statute of Repose without evidence of substantial failure of the construction components and resulting damages. But we do not know the arbitrator's analysis on damages because he remained silent.

There is no evidence that D.R. Horton failed to exercise slight care or engaged in intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. In fact, the evidence indicates D.R. Horton engaged in more than slight care. D.R. Horton had a supervisor on site every day, hired experienced subcontractors to perform the work, required each subcontractor to have a supervisor on site every day, and held kickoff and other meetings. Exhibit Y, 7/31/2023 Tr. pp. 15-20; 30-31; 71-73; 88. The buildings are performing as intended. Plaintiff's expert extrapolated from a tiny sample that a high percentage of the siding and roofing nails were

incorrect; however, even he agreed there has been no substantial failure. Exhibit X, 7/26/2023 Tr. pp. 94; 107; 109. The siding has performed as expected during four named storms over the past 12 – 14 years.

The only other alleged defect that Plaintiff's expert Mr. Mease pointed to as being what he referred to as a "gross dereliction of duty" was the selection of the windows used in conjunction with the cementitious siding j channel materials. However, the windows are appropriate for the buildings.

WINDOWS

Evidence was presented that many of Defendant's communities have similar vinyl window and cement fiber board combination used in the townhomes. Plaintiff's damages expert, Mr. Dow, even agreed that the combination can be used. Exhibit X, 7/26/2023 Tr. p. 193. No evidence was introduced from the manufacturer's publications saying that the use of these products together is not recommended. The testimony revealed that the window manufacturer has accessory J-channel filler panels to be used to accommodate such an interface, clarifying that the siding and window combination used is common and acceptable. Exhibit Y, 7/31/2023 Tr. p. 143. While Mr. Mease opined that the proper sealant joint was not installed, besides isolated and limited instances of moisture, the alleged sealant issue only resulted in limited instances of rusting nail heads on the face of the sill nailing fin with no damage or wood rotting to the interior of the building. Exhibit Y, 7/31/2023 Tr. pp. 115; 116; 142-143; Exhibit X, 7/26/2023 Tr. pp. 94;107; 109. In fact, all experts agreed that regardless of the window used, some minor amount of water is anticipated to get into the cavity. As such, the nail heads would have been exposed to moisture under either application. Accordingly, neither the selection of the windows, which is widely used in this application in

the region, nor the failure of the sealant joint rise to gross negligence. And there was no testimony that any window had failed.

SIDING

Mr. Mease opined that the International Residential Code ("IRC") in place when the Project was built, the 2006 edition, Exhibit s, required the blind nailed siding to be nailed into the studs. He stated he made 12 intrusive observations into the siding. His testimony was that since the framing studs were required to be 16" on center and the spacing of the nails exceeded 16", the siding was not nailed into the studs. However, he did not testify that all the siding was not nailed into any studs. Instead, he only extrapolated based on a small sample, that based on the spacing between the nails and that some nails were not in the studs that the nailing violated the Building Code. Importantly, neither Mr. Mease nor any other Plaintiff witness refuted that the exterior wall sheathing was 1/2" OSB. In his deposition, Mr. Mease confirmed the OSB used was ½" thick. Exhibit U, page 25. This is important because whether siding must be nailed into the studs or can be nailed into the sheathing depends on the thickness of the sheathing. Mr. Mease's testimony regarding the siding completely missed the point. His testimony was predicated on OSB of less than 7/16ths thickness. The OSB used was 1/2" which changes how the siding may be fastened to the building. He also incorrectly asserted that blind nailing and face nailing could not be combined. However, Plaintiff's arbitration PowerPoint, pages 103-104, specifically states that the siding manufacturers allow double nailing. Exhibit T. Thus, if repair needed to be made to the siding installation, it could be face nailed and then painted, as Defendant's estimate of damages shows. Exhibit L.

Defendant's expert Steve Moore, P.E. testified that based on his review of the manufacturer's installation manuals for HardiPlank, Certainteed and Nichia (the manufacturer

that Mr. Moore thinks is the unknown board manufacturer), those manufacturers based their "nail into the studs" requirements on 7/16" wall sheathing board. Exhibit Y, 7/31/2023 Tr. pp. 130-131; 133-135;171-172; 213-214; 219. The testimony confirmed was that the OSB on the Project was ½" or 8/16". The materials Mr. Moore included in his power point presentation showed that cement fiber siding installation instructions allowed nailing of their siding directly into the sheathing when the sheathing is ½" thick.[21] Exhibits U and V. Additionally, the installation allows for 24" distances when nailing into the sheathing. Exhibit U & V.[22] When the sheathing is ½" or thicker and the sheathing is nailed into the studs, as it was in this case, the sheathing itself becomes part of the building's structural frame, which allows the siding to be nailed into it. By utilizing the ½" sheathing, the installation of the cement siding complied with the requirements of the IRC. Since the installation complied with the IRC, there would be no code violation and could not be gross negligence. Additionally, the limited warranty for the siding is 15 years. Exhibit W. The buildings with their siding intact have lasted 12-14 years already. There was no gross negligence in the siding installation.

ROOFS

Plaintiff's expert Mr. Mease testified that he exposed several areas of the roof. He acknowledged that there was little to no widespread shingle loss or any interior damage or massive failure. Exhibit X, 7/26/2023 Tr. pp. 107; 109. In fact, he showed pictures where only few shingles had been replaced. One area was where a roof boot had caused a leak and the homeowner paid to have that area fixed, and logically, the shingles in the area were replaced. His

[21] In response Plaintiff pointed to ESR-2290, however, that document also allows for nailing directly into sheathing and not studs.

[22] Plaintiff's expert focused much of his siding related testimony on the fact that a chalk line was not run and that a chalk line would more likely result in the siding being nailed into the studs. However, because a more robust sheathing product was used, there was no requirement that the siding be nailed into the studs. Mr. Mease simply got it wrong.

only criticism of the roof installation was over driven nails. Plaintiff submitted evidence that the manufacturer's instructions say not to do this. However, he did not show where the manufacturer says the level of overdriven nails would constitute an installation error undermining the effectiveness of the roof shingle. No evidence was presented that the overdriven conditions were to such a degree that any roof was compromised. The fact that the roofs of the 6 buildings have survived 12-14 years with no water intrusion speaks to the adequacy of the attachment. Any future failing of the roofs, which are near the end of their useful life in any event, is speculative at best.

Further, Defendants expert provided evidence from National Roofing Contractors Association, that too much emphasis is placed on these type of nailing issues and that their existence does not affect the effectiveness of the roof. In fact, "research has shown once self-sealing asphalt shingles have sealed, fastener placement has little effect on the wind resistance and overall performance of the asphalt shingle roof system." Exhibit Y, 7/31/2023 Tr. p. 140. Plaintiff did not prove that the roof installation amounted to gross negligence.

The siding, roofs, and windows have protected the interior of the buildings from water intrusion and have worked as they were intended for almost 14 years. More than slight care was taken. A finding of gross negligence as to any of the windows, siding, or roof components manifestly disregards South Carolina law.

Conclusion

The parties and arbitrator agreed that a reasoned award would be issued. The arbitrator exceeded his authority and manifestly disregarded the law when he failed to issue a reasoned award as to standing and real party in interest and as to all aspects of the damages. The

arbitration award should be vacated, and the case dismissed for lack of standing and real party in interest. If the court agrees, it need not consider the other issues.

The arbitrator also manifestly disregarded the law of standing, real party in interest, and basic contract law. The arbitration award should be vacated because the damages awarded are speculative without a causal connection to the alleged failed duty of care. Additionally, a finding of gross negligence without any failure of the components is not consistent with South Carolina law and that determination should also be vacated.

Alternatively, a new arbitration should be ordered to be conducted before a new arbitrator who will issue a reasoned award based on the law and facts.

Dated November 20, 2023

s/ Carl F. Muller

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EXHIBIT A

BP0968950

PGS: 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West are recorded in the office of the Charleston County Register of Deeds in Book P638 Page 409; and

WHEREAS, these Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West have been previously amended and the First Amended is recorded in the office of the Charleston County Register of Deeds in Book 0032 Page 997; and

WHEREAS, in excess of Seventy-Five Percent (75%) of the members of the Association have voted to amend the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West as set forth herein; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West are amended as follows:

AMENDMENTS

1. The following language shall be added and inserted in Section 5.1 entitled "**Townhome Association's Responsibility**":

> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof. Any and all funds recovered and received by the Association after expenses of the claim shall be placed in a separate interest-bearing account and used for the sole purpose of making repairs to the townhome exteriors and exterior building components. Any such repairs made with these collected funds shall be prioritized and made at the sole discretion of the Association.

2. Article XVII entitled "**Dispute Resolution and Limitation on Litigation**" and all of its subsections to include 17.1, 17.2, 17.3, 17.4, 17.5, and 17.6 shall be deleted in its entirety and in its place shall be inserted:

ARTICLE XVII
Dispute Resolution

Any dispute between the Association and the Declarant shall be submitted to binding

arbitration with a single arbitrator agreed to by the parties or appointed by the Court. The arbitrator shall have the sole discretion to determine the rules and procedures of the arbitration and any law applicable thereto. The award of the arbitrator shall be final and binding.

To the extent that there is any provision in the Declarations that conflict with this Amendment, the terms of this Amendment shall govern. The Board of the Association shall have the right to give the final meaning and interpretation of any term of the Declaration and Amendments thereto and shall have the right to modify any provision for which it determines impedes it from fulfilling its duties and obligations to the members of the Association provided that at least two-thirds (2/3) of the Board votes in favor of such interpretation and/or modification.

IN WITNESS WHEREOF, Mansfield at Park West Inc. (the Townhome Association) by its President, has executed this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West this 1 of ~~February~~ March 2021.

MANSFIELD AT PARK WEST, INC.

Signature of 1st Witness

By: _____
Mike Frappier, Its President

Signature of 2nd Witness

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, _____ (Notary Public), do hereby certify that Mansfield at Park West, Inc., by Mike Frappier, its President personally appeared before me this day and acknowledged that due execution of the foregoing instrument.

Witness my hand and seal this the 1 day of ~~February~~ March 2021.

Notary Public for South Carolina
My commission expires: 3/28/26

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
CHAKERIS LAW FIRM

231 CALHOUN ST.
CHARLESTON SC 29401

RECORDED

Date: March 9, 2021
Time: 2:38:20 PM

Book	Page	DocType
0968	950	Amend/Misc

Michael Miller, Register
Charleston County, SC

MAKER:
MANSFIELD @ PARK WEST

RECIPIENT:
NA

Original Book: P638

Original Page: 409

# of Sats:

Note:

# of Pages: 3
# of References:

Recording Fee	$ 25.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
TOTAL	$ 25.00

DRAWER Drawer 4
CLERK SLW

0968 Book

950 Page

03/09/2021 Recorded Date

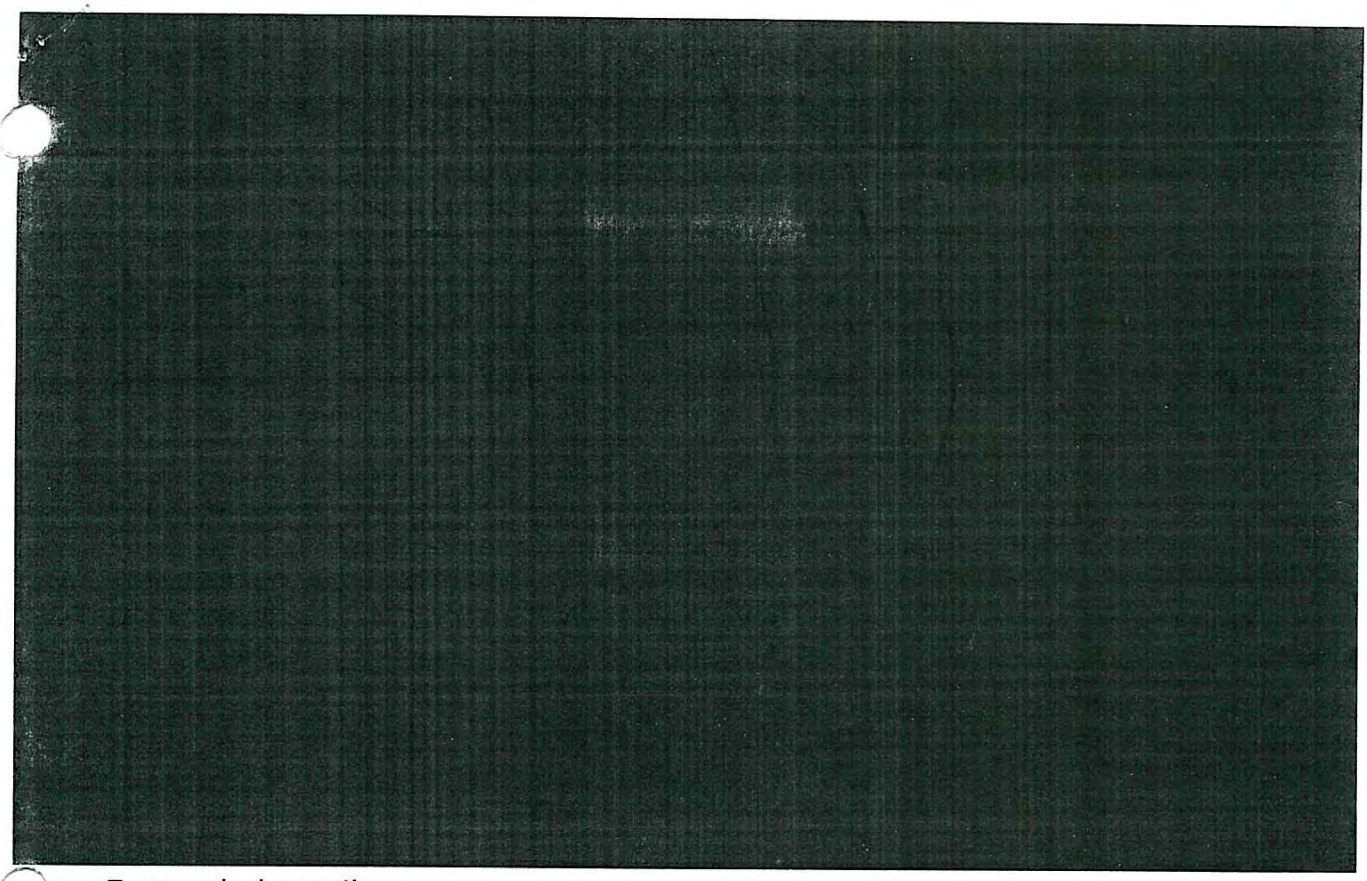
3 # Pgs

P638 Original Book

409 Original Page

D Doc Type

14:38:20 Recorded Time



Forwarded email

From: DHICustomerCare@drhorton.com
Date: March 2, 2021
To: mfrappier@email.com
Cc:
Subject: Your D.R. Horton Customer Care Request has been assigned ticket number [TicketId]

3/2/2021

Dear Michael Frappier,

We are writing to let you know we received the following customer care request:

I am a board member at Mansfield at Park West and it has recently been brought to our attention that the siding installed throughout our community is not installed properly and is very loose and not nailed into studs. The contractor advised it is a significant repair. Our shingles need repair too. When can a DR Horton representative meet at Mansfield at Park West to inspect these conditions and schedule repair? Thank you.

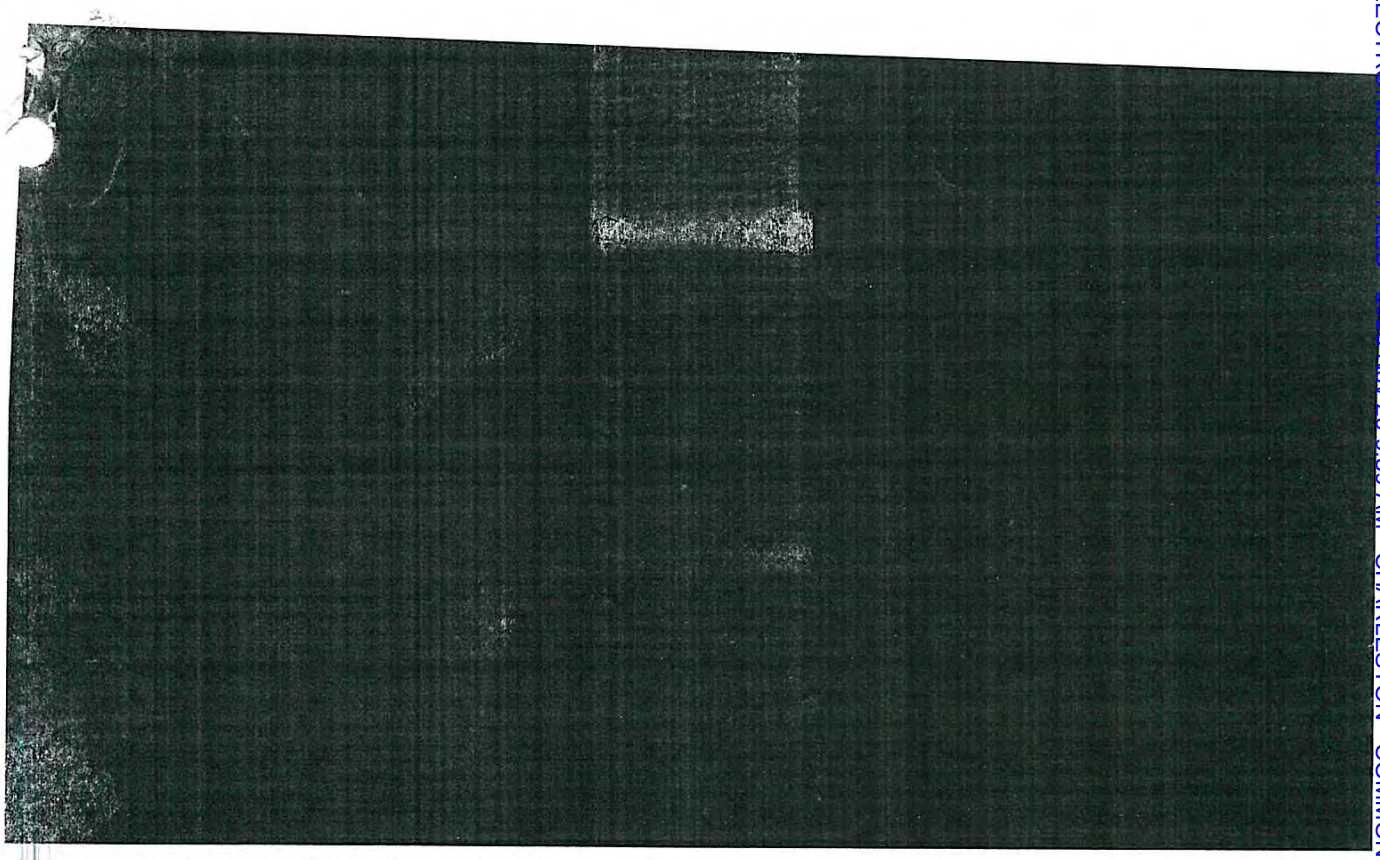
A Customer Service Representative will contact you within one business day.

If you have any questions or concerns please email CharlestonWarranty@drhorton.com

Sincerely,

D. R. Horton Customer Care Team

PLEASE do not respond to this email. Instead, contact your local Customer Care representative for further assistance.



Sent: Friday, March 05, 2021 at 8:10 AM
From: "CharlestonWarranty" <CharlestonWarranty@drhorton.com>
To: "michael frappier" <mfrappier@email.com>, "CharlestonWarranty" <CharlestonWarranty@drhorton.com>
Subject: RE: Warranty Request - Frappier - Mansfield At Park West 51068 Lot 18 - 3041 Park West Blvd

Hello Mr. Frappier,
We do not accept requests for work to be done from people who do not currently own the home work is being requested at. Additionally, since the original closing date on your home is 11/30/2010 you are outside the D.R. Horton warranty and we will not be assessing your concerns.

Thank You,

Josh
Charleston Customer Service
D.R. HORTON
PO Box 1545, Mount Pleasant SC 29465
o: 843-284-5000
Home for every stage in life. | D.R. Horton · Express · Emerald · Freedom

From: michael frappier <mfrappier@email.com>
Sent: Thursday, March 4, 2021 6:26 PM
To: CharlestonWarranty <CharlestonWarranty@drhorton.com>
Subject: Re: Warranty Request - Frappier - Mansfield At Park West 51068 Lot 18 - 3041 Park West Blvd

[External]

Josh,

I'm disappointed in your reply that DR Horton won't repair these problems. My request for inspection and repairs was not just for my townhome but for the entire Mansfield at Park West community. Wil DR

Horton please reconsider the repair request. I'm happy to meet with your or send you pictures if that will be helpful.

Thank you,
Mike

Sent: Wednesday, March 03, 2021 at 8:33 AM
From: "CharlestonWarranty" <CharlestonWarranty@drhorton.com>
To: "mfrappier@email.com" <mfrappier@email.com>
Cc: "CharlestonWarranty" <CharlestonWarranty@drhorton.com>
Subject: Warranty Request - Frappier - Mansfield At Park West 51068 Lot 18 - 3041 Park West Blvd

Hello Mr. Frappier,

Thank you for submitting your warranty request. I see that the original closing date on your home is 11/30/2010. The D.R. Horton Warranty on your home has expired and we will not be assessing this item. You will need to take the appropriate actions to resolve this.

Thank You,

Josh
Charleston Customer Service
D.R. HORTON
PO Box 1545, Mount Pleasant SC 29465
o: 843-284-5000
Home for every stage in life. | D.R. Horton · Express · Emerald · Freedom

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BK P 638PG409

THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO THE SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10, et. seq., CODE OF LAWS OF SOUTH CAROLINA, 1999

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

Upon recording, please return to:

Willcox, Buyck & Williams, P.A.
1991 Glenns Bay Road
Surfside Beach, SC 29575

TABLE OF CONTENTS

BK P 638PG413

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MANSFIELD AT PARK WEST

This Declaration of Covenants, Conditions and Restrictions is made this 10th day of September, 2007, by **D.R. HORTON, INC.**, a Delaware corporation with an address of 503 Wando Park Blvd., Suite 200, Mt. Pleasant, SC 29464 (hereinafter the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference; and,

WHEREAS, the Property has been previously submitted to certain imposed mutually beneficial covenants, conditions, restrictions and easements under a general plan of improvement for the benefit of all owners of residential property within a residential community known as "Park West" pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Park West Master Association dated December 17, 1997 and recorded on December 17, 1997 in Book P294 at Page 275, et seq., including all amendments thereto, records of Charleston County (hereinafter "The Master Declaration"); and,

WHEREAS, the real property described in the attached Exhibit "A" is a portion of that real property subjected to The Master Declaration; and,

WHEREAS, pursuant to Paragraph 1.1.15, Declarant herein is defined as a "Developer" pursuant to The Master Declaration, and is holding the Property for purpose of development into Units; and

WHEREAS, pursuant to Paragraphs 1.1.26, 1.1.27 and 2.4..4 a Developer may submit its Property within Park West to additional restrictions by creating a Subordinate Association and filing a Subordinate Declaration; and

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the property known as Mansfield at Park West and the interrelationships of the component residential associations, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such property as is now or may hereafter be submitted to this Declaration. The Association hereby created may perform educational, recreational, charitable and other social welfare activities

NOW, THEREFORE, Declarant, D.R. Horton, Inc., hereby declares as follows:

ARTICLE I
Creation of the Community

1.1 Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A" and as Developer under the Master Declaration, hereby declares that the real property described in Exhibit "A" and any additional property as may by subsequent amendment be added to and subjected to this Declaration, shall be held, sold and conveyed subject to The Master Declaration and the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the property comprising Mansfield at Park West. An integral part of the development plan is the creation of a townhome neighborhood known as Mansfield at Park West, Inc. (the "Townhome Association"), an association comprised of all Owners of real property in Mansfield at Park West, to own, operate or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

1.2 Binding Effect.

The property described in Exhibit "A" and any additional property which is made a part of Mansfield at Park West shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title or interest in any portion of Mansfield at Park West, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of each owner thereof. The provisions set forth in this Declaration shall be applicable only to Owners of any Units as defined herein in Article II Section 2.5.

This document does not and is not intended to create a condominium within the meaning of the South Carolina Horizontal Property Regime Act.

This Declaration, as it may be amended and supplemented from time to time, shall remain in effect and shall be enforceable by the Declarant, the Townhome Association, any Owner, and their respective legal representatives, heirs, successors and assigns for a term of Twenty (20) years from the date this Declaration is Recorded. After such time, this Declarations shall be extended automatically for successive periods of Ten (10) years each, unless an instrument signed by a majority of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration in which case it shall terminate as of the date specified in such instrument. Nothing in this section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3 Governing Documents.

The Governing Documents create a general plan of development for Mansfield at Park West. The Governing Documents include The Master Declaration and this Declaration which shall be in addition to the covenants, conditions, restrictions and easements set forth in the Master Declaration. To the extent that this Declaration conflicts with The Master Declaration the latter shall control except to the extent the former establishes a higher or stricter standard or requirement for Mansfield at Park West.

No Person shall record additional covenants, conditions, or restrictions affecting any portion of Mansfield at Park West without Declarant's written consent, so long as Declarant owns any portion of the real property described in Exhibit "A" or "B". Thereafter, Owners representing at least Seventy-five (75%) percent of the Townhome Association's total votes must consent to such additions. Any instrument Recorded without the required consent is void and of no force and effect.

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

ARTICLE II
Definitions

2.1. **"Area of Common Responsibility"** shall mean and refer to the Common Area, together with those areas, if any, which by contract with any residential or condominium association with any commercial establishment or association, or with any apartment building owner or cooperative within Townhomes, become the responsibility of the Townhome Association.

2.2 **"Assessment":** shall include without limitation, general, special, specific or Neighborhood assessment.

2.3 The **"Board of Directors** or **"Board":** The body responsible for administering the Townhome Association, selected as provided in the By-Laws, a copy of which is attached hereto as Exhibit "C" and serving the same role as the board of directors under South Carolina corporate law.

2.4 **"Common Area" or "Common Properties":** All real and personal property now or hereafter owned by the Townhome Association for the common use and enjoyment of the Owners.

2.5 **"Common Expenses":** The actual and estimated expenses of operating the Townhome Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Articles of Incorporation.

2.6 **"Community":** The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with this Declaration and commonly known as Mansfield at Park West.

2.7 **"Declarant":** D.R. Horton, Inc., a Delaware Corporation, or any successor or assign which is designated as Declarant in a Recorded Instrument executed by the immediately preceding Declarant.

2.8 **"FNMA, Freddie MAC, VA & FHA"** shall mean and refer to the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and

Federal Housing Authority, respectively.

2.9 **"Master Association"**: Park West Master Association, Inc.

2.10 **"Member"**: A person or entity entitled to membership in the Townhome Association, as provided herein.

2.11 **"Neighborhood"**: Separately designed, developed residential areas comprised or various types of housing initially or by amendment made subject to this Declaration, for example and as by way of illustration and not limitation: patio home development, condominiums, or fee simple townhouses. In the absence of a specific designation of separate parcel status, all property made subject to this Declaration shall be considered a part of the same parcel; provided, however, the Declarant may designate in any subsequent amendment adding property to the terms and conditions of this Declaration that such property shall constitute a separate parcel or parcels.

2.12 **"Neighborhood Assessments"**. Neighborhood Assessments for common expenses for herein or by any supplementary Declaration shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the owners of the Units against which the specific parcel assessment is levied and of maintaining the property within a given Neighborhood, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below.

The Neighborhood Assessment shall be levied equally against owners of Units in a Neighborhood for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

2.13 **"Owner"**: The record owner, whether one or more persons or entities, of any Townhome Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Townhome Unit is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser, (rather than the fee owner) shall be considered the Owner for purposes of this Declaration.

2.14 **"Person"**: A natural person, a corporation, a partnership, trustee, or other legal entity.

2.15 **"Properties" or "Property"**: The real property described in Exhibit "A" attached hereto and shall further refer to such additional property as may hereafter be annexed by amendment to this Declaration or which is owned in fee simple by the Townhome Association.

2.16 **"Townhome Association" or "Association"**: Mansfield at Park West, Inc., a South Carolina nonprofit corporation, its successors and assigns.

2.17 **"Unit"**: For purposes of this Declaration, "Unit" shall mean and refer to "Townhome Units". Townhome Units are Units as defined in The Master Declaration. Moreover, a Townhome Unit consists of any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction or improvements, a single dwelling site for a Townhome that will be attached by one or more party

walls to another Townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units that are appurtenant to and serve each Townhome Unit (including, but not limited to, compressors, conduits, wires and pipes) and any driveway, porch, deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Townhome Unit when such Townhome Unit is initially constructed.

For the purpose of Article X of this Declaration, a newly constructed Unit shall come into existence and shall be liable for assessements upon the issuance of a certificate of occupancy by the appropriate agency of Charleston County, the City of Mount Pleasant or any other appropriate governmental or quasi-governmental entity.

ARTICLE III
Property Rights

3.1 **Members' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area subject to any restrictions or limitations contained in any deed or amendment to this Declaration conveying to the Towhnome Association or subjecting to this Declaration such property. Any owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and invitees subject to reasonable regulation and in accordance with procedures the Townhome Association may adopt.

3.2 **Title to Common Properties.** Declarant shall convey legal title to the Common Properties to the Townhome Association prior to the end of the Declarant Control Period, or to the Master Association, as appropriate, in accordance with the provisions of Section 2.2.3 of the Master Declaration. Further, Declarant shall remove all liens and encumbrances on the Common Properties, except those created by or pursuant to the Declaration, subject, however, to the following covenants, which shall be deemed to run with any land conveyed to the Townhome Association and shall be binding upon the appropriate Association, its successors and assigns:

> In order to preserve and enhance the property values and amenities of the community, the Common Properties and all facilities now or hereafter built or installed thereon, shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Properties shall include, but not be limited to, the repair of damage to pavement, walkways, outdoor lighting, and entrance. Further, it shall be an express affirmative obligation of the Association to keep all of the Common Properties conveyed to it and facilities appurtenant thereto, open, adequately staffed and operating during those months and during such hours as such property would normally be in operation in this locality.

This Section shall not be amended, except as provided for in Article XVIII, to reduce or eliminate the obligation for maintenance and repair of the Common Properties.

3.3 **Additions to Common Properties.** In the event Declarant exercises the option set forth in Article VIII of this Declaration to bring additional properties within the scheme of this Declaration, it shall also have the right but not the obligation to construct additional recreational facilities and convey such land and facilities to the Townhomes Association or Master Association as Declarant deems appropriate.

3.4 **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Townhome Association and/or Master Association, as provided in its By-Laws to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulation;

(b) The right of the Townhome Association and/or Master Association to charge reasonable admission and other fees for the use of the Common Properties;

(c) The right of the Townhome Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no dedication or transfer, determination as to the purpose or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast seventy-five (75%) percent of the eligible votes has been recorded, agreeing to such dedication, transfer, purpose or condition and unless written notice of the action is sent to every Member at least Thirty (30) days in advance of any action taken;

(d) The right of the Declarant and of the Townhome Association to grant and reserve easements and rights-of-way, in, through, under, over and across the Common Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, and other utilities, and the right of the Declarant to grant and serve easements and rights-of-way, in, through, under, over, upon and across the Common Properties for the completion of the Declarant's work.

ARTICLE IV
Membership and Voting Rights

4.1 **Membership.** Every person or entity who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall be determined to have a membership in the Townhome Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No Owner, whether one or more persons, shall have more than one membership per Unit owned. In the event of multiple owners of a Unit, votes and rights of use

and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote for each class of membership applicable to a particular Unit be cast for each Unit.

4.2 **Voting.** The Townhome Association shall have two (2) classes of membership, Class "I" and Class "II" as follows:

(a) Class "I". Class "I" members shall be all Owners with the exception of the Class "II" members, if any.

Class "I" members shall be entitled on all issues to one (1) vote for each Unit in which they hold the interest required for membership by Section 1 hereof; there shall be only one (1) vote per Unit. When more than one person holds such interest in any Unit, the vote for such Unit shall be exercised as those owners themselves determine and advise the Secretary of the Townhome Association prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one person seeks to exercise it.

(b) Class "II". The sole Class II Member shall be the Declarant, its successor or assign. At the time Declarant records a subdivision plat of the Townhomes in the records of Charleston County, South Carolina, for any of the real property described in Exhibit "A" or "B", or made subject to this Declaration as provided herein, Declarant shall have voting rights under this section of all Units shown on such Plat(s). As to all matters with respect to which Members are given the right to vote under the Governing Documents, the Declarant shall be entitled to ten (10) votes per Unit owned and in addition, shall be entitled to appoint all of the members of the Board until termination of the Class II Membership. The Class II Membership shall cease to exist and shall be converted to Class I Membership only upon the earlier of the following:

(1) One Hundred Twenty (120) days after the conveyance by Declarant of all of ninety (90%) percent of the Units within the real property described in Exhibit "A" or "B" or made subject to this Declaration pursuant to Section 10.1 hereof; or

(2) A date selected by Declarant as evidenced by a recorded instrument, but not later than ten (10) years after the recording of this Declaration.

ARTICLE V
Maintenance

5.1. **Townhome Association's Responsibility.** The Townhome Association shall maintain and keep in good repair the Common Area not conveyed to the Master Association. The Townhome Association shall also maintain and keep in good repair the exterior of the Units, including but not limited to the landscaping around the Units which shall include the back yard of a Unit unless the back yard of such Unit has been enclosed by a fence which was approved by the Townhome and/or Master Association, and such maintenance to be funded, as hereinafter provided; provided, however, any sidewalk which may be a part of the Common Area, if not dedicated to public maintenance, shall be maintained by the Townhome Association. This

maintenance shall include the following:

(a) periodic treatment of all exterior walls and foundations of the Units for termites; provided the Townhome Association shall not be liable if such treatment proves to be ineffective; and

(b) maintaining all of the landscaping and other flora around each Unit in a manner and upon terms and conditions as determined by the Townhome Association, which maintenance shall include mowing lawns, pruning shrubbery, weed control removal and replacement of dead trees and shrubs and irrigation; and,

(c) maintenance, repair, and replacement as necessary, including pressure washing, any sidewalks and driveways, including paved portions of the Units adjacent to the garage of any Unit if such driveway or paved portion is shared by two or more Units; and,

(d) maintenance, repair, and replacement as necessary of any irrigation equipment, including, but not limited to sprinklers, wells, pumps water lines and time clocks wherever located, serving the front yard of each Unit, except that the Townhome Association shall have no responsibility for any of the aforementioned which is installed or altered by any Owner or Occupant of a Unit or his or her guest, agent, employee or contractor; and,

(e) maintenance, repair, and replacement as necessary perimeter landscaping or walls within the perimeter easement are, if such perimeter walls or landscaping are initially installed by the Declarant or the Townhome Associations; and,

(f) maintenance, repair, and replacement as necessary of any and all structures and improvements situated upon the Common Area owned by the Townhome Association.

All costs and expenses related to the Townhome Association's maintenance responsibility hereunder shall be part of the General Assessment; provided however that any cost or expense incurred by the Townhome Association as a result of the negligence or misconduct of any Owner or Occupant of a Unit or his or her guest, agent, employee or contractor shall be assessed as a Specific assessment against the Owner of such Unit.

5.2. **Owner's Responsibility**. Each Owner shall maintain his or her Unit and all structures, parking areas, backyards and other improvements comprising the Unit in a manner consistent with the standards of Mansfield at Park West and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. Each Owner's maintenance responsibility shall include, but shall not be necessarily limited to, the following:

(a) maintenance, repair, and replacement as necessary all pipes, lines, wires, conduits or other apparatus which serve only the Unit located wholly within the Unit boundaries, including all utility lines serving on the Unit; and

(b) maintenance, repair, and replacement as necessary of the exterior surfaces of the Units, including window, and window frames, doors, and door frames, including garage doors, and any shutters, eaves, fascia, gutters and down spouts on the exterior of the Units; and

(c) maintenance, repair, and replacement as necessary of the foundation and structure of the Unit; and

(d) maintenance, repair, and replacement as necessary, including pressure washing of driveways, unless the driveway is shared by more than one Unit; and,

(e) maintenance, repair and replacement as necessary of the roof including shingle and roof decking of the Unit.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Townhome Association may perform such maintenance responsibilities and assess all costs incurred by the Townhome Association against the Unit and the Owner as a Specific Assessment in accordance with Article X. The Townhome Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. **Standard of Performance.** Notwithstanding anything to the contrary contained herein, the Townhome Association, and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been grossly negligent in the performance of its maintenance responsibilities.

ARTICLE VI
Insurance and Casualty Losses

6.1. **Insurance.** The Townhome Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area not herein conveyed to the Master Association against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Common Area, the Townhome Association, and its members for all damage or injury caused by the negligence of the Townhome Association or any of its members or agents, and, if reasonably available, directors' and officer's liability insurance. The public liability policy shall have minimum limits in the amounts that the Board deems reasonable. Premiums for all insurance on the Common Area shall be common expenses of the Townhome

Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Cost of insurance coverage obtained for the Common Area shall be included in the General Assessment, as defined in Article X. hereof.

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

(a) All policies shall be written with a company licensed to do business in South Carolina holding a rating of AA or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Unit Owners and their mortgagees as their interest may appear.

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

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

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

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

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

(iii) That no policy may be cancelled, invalidated or suspended on account of any one or more individual owners;

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

(v) That any "other insurance" clause in any policy exclude individual owners' policies from consideration.

6.2. **No Partition**. Except as is permitted in the Declaration, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 4 of this Article in the case of damage or destruction, or unless the Properties have been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

6.3 **Disbursement of Proceeds**. Proceeds of insurance policies shall be disbursed as follows:

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

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 3(a) hereof.

6.4 **Damage and Destruction.**

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

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Townhome Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Townhome Association within said period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not

exceed and additional sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event any damage or destruction to the Common Area includes damage or destruction to any exterior portion or roof of a Unit, the amount of the insurance proceeds paid as a result of such damage or destruction shall be used to repair or reconstruct such Common Area. If the insurance proceeds are not sufficient to pay for such repair or reconstruction, the Townhome Association shall pay all amounts necessary to repair or reconstruct said Common Area.

(d) In the event that it should be determined by the Townhome Association pursuant to subparagraph (b) above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Townhome in a neat and attractive condition and any insurance proceeds paid as a result of such damage or destruction shall be paid to the Townhome Association.

6.5 **Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Townhome Association's members, levy a special assessment against all owners in proportion to the number of Units owned by such owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Townhome Association.

6.6 **Owner's Required Coverage.** Each Owner shall be responsible for obtaining and maintaining at all times insurance covering all portions of his or her Unit including contents. In addition, to the extent not insured by policies of the Townhome Association or the extent insurable losses result in the payment of deductibles under the Townhome Association's policies, every Owner shall obtain and maintain at all times insurance covering consequential damages to any other Unit or the Common Area due to occurrences originating with the Owner's Unit and caused by the Owner's negligence, the Owner's failure to maintain the Unit or any other casualty within the Unit, which caused damage to any other Unit or the Common Area.

In the event of damage or destruction to a Unit, the Owner shall have sixty (60) days to complete any necessary repairs or reconstruction. Such repair or reconstruction shall conform to the architectural requirements set forth in this Declaration. In the event that an Owner does not complete the necessary repairs or reconstruction, the Townhome Association shall have the right, but not the obligation, to enter upon the Unit without further notice and complete the necessary repairs or reconstruction to bring the Unit into compliance with the Community Standard. All amounts expended by the Towhnome Association to complete the repairs or reconstruction shall be assessed as a Specific Assessment against the Unit and the Owner in accordance with Article X. The Townhome Association shall not be held liable for any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents or any injury, damages, or loss arising out of the manner or quality of the

repairs or reconstruction to any Unit undertaken by the Towhnome Association due to the failure of an Owner to comply with the requirements of this paragraph unless and only to the extent that it has been grossly negligent in the performance of such repairs or reconstruction.

At the Board's request, Owners shall file a copy of each individual policy or policies covering his or her Unit and personal property with the Board within ten (10) days after receiving such request. Such Owner shall promptly notify the Board in writing in the event such policy is canceled.

ARTICLE VII
Condemnation

Whenever all or any part of the Common Area not conveyed to the Townhome Association shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Units subject to the taking, if any) by any authority having the power of condemnation or eminent domain, each owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Townhome Association, as Trustee for all owners, to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been have been constructed, then, unless within sixty (60) days after taking the Declarant and at least seventy-five (75%) percent of the Class "I" members of the Towhnome Association shall otherwise agree, the Townhome Association shall restore or replace such improvements so taken on the remaining land included in the Common Area, to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Townhome Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Townhome Association and used for such purposes as the Board of Directors of the Townhome Association shall determine.

ARTICLE VIII
Annexation of Additional Property

8.1 **Annexation Without Approval of Class "I" Membership.** As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option, but not the obligation, from time to time at any time until twenty (20) years from the date this Declaration is recorded in the office of the Register of Mesne Conveyances for Charleston County to subject to the provisions of the Declaration and the jurisdiction of the Townhome Association all or any portion of the real property described in Exhibit "B" attached hereto and by reference made a part thereof, whether in fee simple or leasehold, by filing in the Charleston County, South Carolina records, an amendment annexing such property. Such

amendment to this Declaration shall not require the vote of members. Any such annexation shall be effective upon the filing for record of such amendment, unless otherwise provided therein.

Declarant shall have the unilateral right to transfer to any other person the said right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property described in said Exhibit "B" attached hereto.

The Declarant, its successors and assigns, shall have the right but not the obligation to bring the proposed additional development within the scheme of this Declaration unless such future developments intend to use the recreational facilities, roads, parking areas, sidewalks and tie into and connect with the sewer, water and drainage lines in the existing Properties.

Such supplementary Declaration may contain such complimentary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the added Property as are not inconsistent with the scheme of this Declaration. In no event, however, shall such supplementary Declaration revoke, modify or add to the Covenants, Restrictions, Easements, Charges and Lien establishing this Declaration within the Properties.

8.2 **Annexation With Approval of Class "I" Membership.** Subject to the written consent of the owner thereof, upon the written consent or affirmative vote of a majority of the Class "I" members other than Declarant of the Townhome Association present or represented by proxy at a meeting duly called for such purpose, the Townhome Association may annex real property other than that shown on Exhibit "B", and following the expiration of the right in Section 1, the property shown on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Townhome Association by filing of record in the office of the Register of Mesne Conveyances for Charleston County, South Carolina, a supplementary amendment in respect to the property being annexed. Any such supplementary amendment shall be signed by the President and the Secretary of the Townhome Association, and any such annexation shall be effective upon filing, unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Class "I" members of the Townhome Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Townhome Association for regular or special meetings, as the case may be.

ARTICLE IX
Rights and Obligations of the Townhome Association

9.1 **The Common Area.** The Townhome Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

9.2 **Personal Property and Real Property for Common Use.** The Townhome

Association, through action of its Board of Directors, may acquire, hold and dispose of any Common Properties, whether tangible or intangible personal property or real property. The Board, acting on behalf of the Townhome Association, shall accept any real or personal property, leasehold, or other property interests within Townhomes conveyed to it by the Declarant.

9.3. **Rules and Regulations**. The Townhome Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the owner's Unit or Units and suspension of the right to vote and the right to use the Common Area. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. Imposition of Sanctions shall be as provided in the By-Laws.

9.4 **Implied Rights**. The Towhnome Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE X
Assessments

10.1 **Creation of General Assessment**. There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. General Assessments shall be allocated equally among all Units within the Townhome Association and shall be for expenses determined by the Board to be for the benefit of the Townhome Association as a whole. Each owner, by acceptance of his or her deed, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest at the highest rate allowable under the laws of South Carolina from time to time relating to usury for commercial real estate loans, costs, and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made.

Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual assessment for delinquents; unless the Board otherwise provides, the assessments shall be paid in monthly installments. It is the intention of this Declaration that assessments for the Townhome Association and the Master Association be collected by each association individually and that the creation of Townhome Association assessments shall in no way alleviate or reduce the amount of assessments which may be due under The Master Declaration. Such a system shall prejudice neither the right for direct collection nor the lien rights set out in Section 4 of this Article. Provided however, that

pursuant to Section 6.9 of the Master Declaration, the Master Association may elect to bill the Townhome Association for any assessments due from the Owners thereby obligating the Townhome Association to collect any amounts due directly from the Owners.

10.2 Computation of Assessment. The Board shall prepare an annual budget, and the following provisions shall apply:

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Townhome Association during the coming year. The budget shall include a capital contribution establishing a reserve fund, in accordance with a capital budget separately prepared, and shall separately list general and parcel expenses, if any. The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Unit for the following year, to be delivered to each owner at least fifteen (15) days prior to said budget's effective date. The budget and the assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board disapproves the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

10.3 Working Capital. **The Townhome Association shall collect from each purchaser of a Unit at the time of purchase a working capital assessment in an amount equal to Two Hundred Fifty and no/100 ($250.00) Dollars.** The funds shall be used for such legal purposes as the Board of Directors may determine. Said working capital contribution shall be collected on all initial and all re-sales of Units.

10.4 Special Assessments. In addition to the assessments authorized in Section 1, the Townhome Association may levy a Special Assessment in any year. So long as the total special assessments authorized under this Article do not exceed Five Hundred and NO/100's ($500.00) Dollars in any one year, the Board, by majority vote, may impose the special assessment. If such total be exceeded, any special assessment shall be effective only with the approval of a majority of the Class "I" members.

10.5. Specific Assessments. The Townhome Association acting by and through its Board shall have the power to levy Specific Assessments against a particular Unit as follows:

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

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the

Bylaws, before levying any Specific Assessment under this subsection (b).

10.6 **Lien for Assessments.** Such assessment shall constitute a lien on each Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust) made in good faith and for value.

The Townhome Association, acting on behalf of the owners, shall have the power to bid for the Unit at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Townhome Association following foreclosure; (1) no right to vote shall be exercised on its behalf; (2) no assessment shall be assessed or levied on it; and (3) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Townhome Association as a result of foreclosure.

Suit to recover a money judgment for unpaid common expenses, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

10.7 **Capital Budget and Contribution.** The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Towhnome Association, as shown on the capital budget, with respect both to amount and timing to annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment, as provided in Section 2 of this Article.

10.8 **Collection of Assessments and Default.** The Board may take prompt action to collect any assessment for common expenses due from any owner which remains unpaid for more than ten (10) days from the due date. Any regular, specific or special assessment levied which is not paid by the first (1st) day of each month, shall be in default. The assessment together with interest thereon at the rate of ten (10%) percent per annum and the costs of collection, including reasonable attorney fees, thereof, shall be a continuing lien upon the Unit belonging to the Owner against whom such assessment is levied. The Owner obligated to pay this delinquent assessment, may, by resolution of the Board of Directors, be subject to such penalty or "late charge" as the Board of Directors may fix prior to the fiscal period in which non-payment occurs. The Towhome Association may bring an action at law against the owner personally obligated to pay the same or foreclose and/or enforce the lien against the Unit then belonging to said owner in the manner now or hereinafter provided for the foreclosure of mortgages or other liens on real property in the State of South Carolina, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, in either of which events interest, costs and reasonable attorney's fees shall be added to the amount of cash assessment.

10.9. Statement of Account. Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Townhome Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting Person personally or by fax or by email. The Townhome Association may require the payment of a reasonable processing fee for issuance of such statement.

Such statement shall bind the Townhome Association in favor of Persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquired its interest after requesting such statement.

10.10. Budget Deficits During Declarant Control.

During the Declarant Control Period, Declarant may (but shall not be required to):

(a) Advance funds to the Association sufficient to satisfy the deficit, if any, between the Association's actual operating expenses and the sum of the Base, Special, Neighborhood, and Specific Assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of Declarant. Declarant's failure to obtain a promissory note shall not invalidate the debt;

(b) Cause the Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan; or

(c) Acquire property for, or provide services to, the Association or the Area of Common Responsibility. Declarant shall designate the value of the property or the services provided, and such amounts, at Declarant's request, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

ARTICLE XI
Architectural Standards and Control

No building, fence, wall or other structure, or change or alteration to the exterior of the Units, or in landscaping shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to

surrounding structures and topography by the Board of Directors of the Townhome Association, or by an Architectural Committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The provisions of this paragraph shall not apply to Declarant. Further, the provisions of this paragraph shall be in addition to and not in place of any and all restrictions and/or requirements for approval as set forth in The Master Declaration.

The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that Units are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners; (d) that views from any other Units or the Area of Common Responsibility are protected; or (e) that no defects exist in approved construction.

Declarant, the Townhome Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

ARTICLE XII
Use Restrictions

12.1. **Framework for Regulation.** The Governing Documents, including the initial Rules and Regulations which are set forth in the attached Exhibit "C", establish as part of the general plan of development for the Townhomes a framework of affirmative and negative covenants, easements, and restrictions to govern the Townhomes. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology which inevitably will affect the Townhomes, its Owners, and residents. Toward that end, this Article establishes procedures for modifying and expanding the initial Rules and Regulations set forth in Exhibit "C."

12.2. **Regulation Making Authority**.

(a) Board Authority. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Towhnome Association and its Members, the Board may adopt, repeal, and modify regulations governing matters of conduct and aesthetics and the activities of Members, residents, and guests within the Community, as defined by the Rules and Regulations set forth in Exhibit "C". The Board shall send notice by mail to all Members concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to

be heard at a Board meeting prior to such action being taken.

(b) Declarant's Authority. Notwithstanding the above provision, during the Declarant Control Period, the Declarant shall have the unilateral right to repeal, limit, modify or expand any of the initial Rules and Regulations set forth in Exhibit "C" without prior notice to the Board or to Members. However, any such amendment shall not materially adversely affect the substantive rights of any Owners, nor shall it adversely affect title to any Unit without the consent of the affected Owner(s).

(c) Members' Authority. Alternatively, Members representing more than fifty percent (50%) of the total votes in the Townhome Association, at a Townhome Association meeting duly called for such purpose, may vote to adopt regulations which modify, cancel, limit, create exceptions to, or expand the Rules and Regulations then in effect. Notwithstanding anything contained herein to the contrary, during the Declarant Control Period, any such action by the Members shall not be valid unless and until Declarant provides its written approval which approval or denial shall be granted in Declarant's sole and exclusive discretion.

(d) Notice; Opportunity To Disapprove. Notice of any Board resolution or Member action adopting, repealing, or modifying regulations shall be sent to all Members at least thirty (30) days prior to the effective date. Subject to Declarant's disapproval rights under the Bylaws, the resolution or Member action shall become effective on the date specified in the notice unless (i) Members petition for a special meeting, in accordance with the Bylaws, to reconsider such resolution, and (ii) the resolution is disapproved at the meeting by Members representing more than fifty percent (50%) of the total votes in the Townhome Association.

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

(f) Common Area Administrative Rules. The procedures required under this Section shall not apply to the enactment and enforcement of Board resolutions or administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment and act in accordance with the business judgment rule, as described in the Bylaws, in the enactment, amendment, and enforcement of such administrative rules and regulations.

12.3 Limitations on Rules and Regulations. Except as may be contained in this Declaration either initially or by amendment, all Rules and Regulations shall comply with the following provisions:

(a) Signs and Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt

time, place, and manner restrictions with respect to displays visible from outside the dwelling. No Owner may post or display any sign, billboard, banner or item of similar nature so as to be visible outside of any dwelling without the prior written approval of the Architectural Review Committee, including but not limited to a "for sale," "for rent," or "garage sale" sign. No rules shall regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs (including design criteria) and limit to a reasonable number the number of signs that may be posted. No sign shall be larger than 18" x 24" and any Owner posting an approved sign shall be responsible for removing such sign in a timely manner and shall be subject to enforcement actions for failing to do so. Notwithstanding anything contained herein to the contrary, the Townhome Association shall have the right, but not the obligation, to exercise self-help and to enter onto a Unit (but not the interior of a Unit) in a non-emergency situation, without notice and opportunity for hearing prior thereto for the purpose of removing any sign, billboard, banner or other item of similar nature posted or displayed in violation of this provision.

(b) Household Composition. No rule established pursuant to this Article shall interfere with the Owners' freedom to determine the composition of their households.

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

(d) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Townhome Association. Nothing in this provision shall prevent the Townhome Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the Governing Documents.

(e) Alienation. No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Unit or require consent of the Townhome Association or Board for leasing or transfer of any Unit; however, the Townhome Association or the Board may require a minimum lease term of up to twelve (12) months.

(f) Reasonable Rights To Develop. No rule or action by the Townhome Association shall unreasonably impede Declarant's right to develop the Community in accordance with the rights reserved to Declarant in this Declaration.

12.4 Owners' Acknowledgment and Notice to Purchasers.

All Owners and prospective purchasers are given notice that use of their Units and the Common Area is limited by the Rules and Regulations, as they may be amended, limited, repealed, expanded, or otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision, that the Rules and Regulations may change from time to time, and that the current Rules

and Regulations may not be set forth in a Recorded instrument. All purchasers of Units are on notice that the Townhome Association may have adopted changes to the Rules and Regulations. The Townhome Association shall provide a copy of the current Rules and Regulations to any Member or Mortgagee upon request and payment of the reasonable cost of such copy.

ARTICLE XIII
Easements

13.1 Easements for Utilities, Etc. Easements for ingress and egress and for the installation, use, maintenance, repair, and replacement of public and/or private utilities including but not limited to sewer, gas, electricity, telephone, TV cable, telecommunications, or water lines for the use of the Units hereinbefore described are hereby created over, under and across the property described on Exhibit "A" as set forth on any plat recorded by Declarant.

There is hereby reserved to Declarant, its successors and assignees, the power to grant reasonable easements upon, across, over and under all of the property for ingress, egress, installation, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewer, telephones, telecommunications and electricity. The Declarant shall, upon written request, grant such easements as may be reasonable necessary for the development of any property reserved by it or annexed as herein provided.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonable interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall by made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier and electric provider easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

Declarant specifically grants to the Townhome Association easements across the properties for ingress and egress for the purpose of maintaining the exterior of the Units and the landscaping around the Units and for any necessary repair or reconstruction as provided in Article VI, Section 6.

13.2 Developmental Easements. Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Properties, for the purpose of completing its work upon the real property described in Exhibit "A" and development of the additional properties if it is brought within the scheme of this Declaration. Further, Declarant reserves the right to continue to use the Properties, and any roadways, walkways, sales offices, model units, signs and parking spaces located on The Properties, in its efforts to market commercial units or lots constructed on the Properties. This paragraph may not be amended without the written

consent of Declarant.

13.3 **Encroachments.** There shall be reciprocal appurtenant easements of encroachment as between each Unit or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Unit or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an owner or tenant.

13.4 **Easements for Cross-Drainage.** Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter, change, obstruct or rechannel the natural drainage on any Unit whatsoever so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the written consent of the Owner of the affected property.

13.5 **Right of Entry.** The Townhome Association, or its duly authorized Manager, shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article IV or VI hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules, which right may be exercised by any member of the Board, the Townhome Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Townhome Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

ARTICLE XIV
CERTAIN RIGHTS OF DECLARANT

14.1 **Declarant Rights.** Notwithstanding any other provisions herein, so long as the Declarant continues to own any of the Units, the following provisions shall be deemed to be in full force and effect:

(a) The Declarant shall have the right at anytime to sell, transfer, lease or relet any Unit(s) which the Declarant continues to own after this Declaration has been recorded, without regard to any restrictions, if any, relating to the sale, transfer, lease or form of lease of Units contained herein and without the consent or approval of the Townhome Association or any other Owner being required.

(b) Without limiting the foregoing, the Declarant shall have the power, but not the obligation, acting alone, at any time (and from time to time) so long as the Declarant owns at least one Unit to: 1)amend the Declaration to cause the same to conform to the requirements of the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, as set forth, respectively, in "FNMA Conventional Home Mortgage Selling Contract Supplement" and

"Seller's Guide Conventional Mortgages", as the same may be amended from time to time; and/or 2)the requirements of the Department of Housing and Urban Development as same may be amended from time to time.

(c) The Declarant shall have the rights (i) to use or grant the use of a portion of the Common Elements for the purpose of aiding in the sale or rental of Units; (ii) to use portions of the Property for parking for prospective purchasers or lessees of Units and such other parties as the Declarant determines; (iii) to erect and display signs, billboards and placards and store and keep the same on the Property; (iv) to distribute audio and visual promotional material upon the Common Elements; and (v) to use any Unit which it owns or leases as a sales and/or rental office, management office or laundry and maintenance facility.

14.2 Maintenance Easement. Declarant reserves for itself and its successors and assigns, and for the Townhome Association, and its officers, agents employees and successors and assigns, an easement to enter on, across, over, in and under any portion of the Properties for the purpose of maintaining the exterior of and the landscaping around the Units.

14.3 Utility Easements. Declarant hereby reserves for itself and its successors and assigns a general easement upon, across, over, in and under the Properties for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems and indoor sprinkler systems. No water, sewer, gas, telephone, electrical, communications, sprinkler systems or other utility or service lines, systems or facilities may be installed or relocated on, under and over the Property unless approved in writing by Declarant. These items may be temporarily installed above ground during construction, if approved by Declarant, subject to the requirements, if any of the County of Charleston or any other authority having jurisdiction over the Properties.

14.4 Drainage and Irrigation Easements. Declarant reserves for itself and its successors and assigns, and for the Townhome Association, and its officers, agents, employees, and successors and assigns, an easement to enter on, across, over, in and under any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself and its successors and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for the maintenance of the Common Elements and for such other purposes as Declarant may from time to time deem appropriate.

14.5 General Provision. Any entity using these general easements provided under this Article XIV shall use its best efforts to install and maintain the easements for utilities, drainage, or irrigation ditches without disturbing the uses of the Owners, the Townhome Association and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible after completion of its work, shall restore the surface to its original condition as soon as possible after completion of its work. Should any entity furnishing a service covered by these general easements request a specific easement by separate recordable document, Declarant shall have, and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, avoid, extinguish, or modify any other recorded easement affecting the

Property.

14.6 **Declarant's Rights Incident to Construction.** Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction of Units on the Property and other consideration by Declarant.

14.7 **General Reservations.** Declarant reserves (a) the right to dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease repair, maintenance, or regulation of parking and/or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners, and/or the Townhome Association.

ARTICLE XV
Mortgagee Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws of the Townhome Association, notwithstanding any other provisions contained therein:

15.1. **Notices of Action.**

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

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

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

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

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

15.2. Other Provisions for First Lien Holders.

To the extent not inconsistent with South Carolina law and any other provisions of the Governing Documents

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

(b) termination of the Townhome Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders representing more than fifty percent (50%) of the votes of Units subject to Mortgages held by Eligible Holders.

15.3. No Priority.

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.4. Notice to Townhome Association.

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

15.5. Failure of Mortgagee To Respond.

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

15.6. Construction of Article XIV.

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

ARTICLE XVI
Party Walls

16.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units upon the Properties and placed on the dividing line between two or more

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 damages due to negligence or willful acts or omissions shall apply thereto.

16.2 **Sharing of Repair and Maintenance.** The reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Owners who make use of the wall in proportion to such use.

16.3 **Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who by his or her negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

16.4 **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

16.5 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the owners under any rule of law regarding liability for negligent or willful acts or omissions.

16.6 **Structural Integrity.** No Owner, his or her tenant, guest, invitees or contractors shall by their acts or omissions impair or cause to be impaired the structural integrity of any party wall or party fences without prior written consent of all Owners having an interest therein.

ARTICLE XVII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

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

Prior to the Townhome Association or any Owner commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect at the Community or any improvement constructed upon the Property, Declarant shall have the right to meet in good faith and discuss the subject of the proceeding with the Owners, or the particular

Owner, and to access, inspect, correct the condition of, or redesign any portion of the Community, including any improvement as to which a defect is alleged. In addition, the Townhome Association, or the Owner, shall notify the builder who constructed such improvement prior to retaining any other expert witness or for other litigation purposes.

17.2 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Townhome Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Sections 17.3 ("Claims") using the procedures set forth in Section 17.4.

17.3. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Property (other than matters of aesthetic judgment under Article XI, which shall not be subject to review) shall be subject to the provisions of Section 17.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 17.4:

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

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

(c) any suit between Owners, which does not include Declarant or the Townhome Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

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

(e) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 17.4(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 17.4.

17.4. Mandatory Procedures.

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

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

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

(iii) Claimant's proposed remedy; and

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

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

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

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

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

(v) Within five (5) days of the Termination of Mediation, the Claimant shall

make a final written demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants' original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

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

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

17.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 173.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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

17.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 17.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 17.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

ARTICLE XVIII
General Provisions

18.1 Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Townhome Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until September 30, 2027, unless otherwise expressly limited herein, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Properties shall be perpetual, run with the land and shall survive any destruction, reconstruction and relocation of the physical structures, unless said provision is abrogated by the unanimous written consent of all the Unit Owners. Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership. Any amendment must by properly recorded to be effective.

18.2 Amendment by Declarant. Notwithstanding anything contained in this Declaration to the contrary, during the time the Class II Membership exists, Declarant, its successors or assigns, shall have the right to unilaterally amend any provision of this Declaration provided that such amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Unit, as determined in the sole judgment of the Declarant. Each Owner by acceptance of a deed or other conveyance to a Unit, agrees to be bound by such amendments as are permitted by this Section.

18.3 Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Townhome Association, its real and personal assets, including the Common Properties, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Townhome Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Townhome Association. No such disposition of the Townhome Association properties shall be effective to divest or diminish any right or title of any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to the Properties, unless made in accordance with the provisions of this Declaration or said covenants and deeds.

18.4 Indemnification. The Townhome Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own

individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Townhome Association (except to the extent that such officers or directors may also by members of the Townhome Association), and the Townhome Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Townhome Association shall, as a common expense, maintain adequate general liability insurance and officers' and directors' liability insurance to fund this obligation.

18.5 **Compliance and Default.** In the event of a violation (other than non-payment of an assessment) by an Owner, (the "Defaulting Owner") of the provisions of this Declaration and/or By-Laws as the same may be amended from time to time, the Townhome Association may notify the Defaulting Owner and its Mortgagee, if any, in writing of said violation and if such violation shall continue for a period of ten (10) days from the day notice is mailed to the last known address provided to the Townhome Association by the Defaulting Owner, the Townhome Association shall have the election to (a) fine the Defaulting Owner as the Board of Directors may fix fines for violation for the fiscal year prior to the year the violation occurs; or (b) file an action at law to recover damages on behalf of the Townhome Association and/or remaining owners; or (c) file an action to enforce performance on the part of the Defaulting Owner; or (d) file an action for such relief as may be necessary. If a Court of competent jurisdiction decides in favor of the Townhome Association, the Defaulting Owner shall reimburse the Townhome Association the attorney's fees, court costs, and expenses incurred in bringing the action. If a Court of competent jurisdiction decides in favor of the Defaulting Owner, the Townhome Association shall reimburse the Defaulting Owner the attorney's fees, court costs, and expenses incurred in defending the action

In the event the Townhome Association fails to file an action to cure a default or violation by a Defaulting Owner within thirty (30) days from the date a written request therefor is made to the Townhome Association from any other Owner, then the non-defaulting Owner is hereby authorized to bring action in the manner aforesaid on behalf of the Townhome Association and said non-defaulting Owner shall be entitled to the same remedies and obligations herein provided.

18.6 **Delegation of Use.** Any owner may delegate, in accordance with the By-Laws of the Townhome Association, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees.

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

18.8 **Perpetuities.** If any of the covenants, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendents of President George W. Bush.

18.9. **Exhibits.** Exhibit "A," and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Declaration. Exhibit "C" is

incorporated by this reference and may be amended in accordance with ArticleXII or this Article. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 10th day September, 2007.

D.R. Horton, Inc.

By: _____
R. Doug Brown
Division President

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON) **(S.C. CODE ANN. §30-5-30(B)(C))**

I, the undersigned, a Notary Public for South Carolina, do hereby certify that R. Doug Brown, as Division President of D.R. Horton, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument, as the act and deed of said corporation.

Witness my hand and official seal this 10th day of September, 2007.

_____ (L.S.)
Notary Public in and for S.C.

My Commission Expires: 9-16-13

EXHIBIT "A"
LAND INITIALLY SUBMITTED

All that certain piece, parcel or tract of land situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, being shown and designated as "PARCEL 31A 7.051 acres", on a plat of survey made by Southeastern Surveying of Charleston, Inc., entitled, "A SUBDIVISION PLAT OF PARCELS 31A, 31B, 31C AND 31D PARK WEST, OWNED BY PARK WEST DEVELOPMENT, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA", dated August 16, 2005, and recorded in the RMC Office for Charleston County on September 16, 2005, in Plat Book EJ at Page 223.

SAID piece, parcel or tract of land having such size, shape, dimensions, and boundaries as will by reference to said plat more fully appear.

THIS BEING a the same property conveyed to Declarant herein by deed of Park West Development, Inc. dated February 14, 2006 and recorded in Deed Book Z572 at Page 427.

EXHIBIT "B"
LAND SUBJECT TO ANNEXATION

Any and all real property lying and being within five miles from any boundary of the property described in Exhibit "A.

Initial Rules and Regulations

The following rules, regulations and restrictions shall apply to Mansfield at Park West until such time as they are amended, modified, repealed, or limited pursuant to Article XII of the Declaration.

1. Residential Purposes. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for Declarant to assist in the sale of property described in Exhibits "A" or "B," offices for any property manager retained by the Townhome Association, and business offices for Declarant or the Townhome Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities and Prohibited Conditions. The following activities and/or conditions are prohibited within the Community *unless expressly authorized in writing by the Board*, and then, subject to such conditions as the Board may impose:

(a) Exterior Additions or Alterations. Construction, erection, placement, or modification of any structure or thing, permanently or temporarily, on the outside portion of a Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article XI of the Declaration. This shall include, without limitation, conversion of any carport or garage to finished space for habitable use, modification of any landscaped or grassed areas, removal of trees, signs, basketball hoops, swing sets, and similar sports and play equipment; clotheslines, garbage cans, woodpiles, in-ground swimming pools, docks, piers, and similar structures, hedges, walls, dog runs, animal pens, or fences of any kind. Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Unit with mulch or stone.

(b) Vehicles. Parking any vehicles on streets, thoroughfares or Areas of Common Responsibility (with exception of designated parking areas) and parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other water craft, trailers, snowmobiles, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or Area of Common Responsibility.

(c) Motorized Vehicles. Operation of motorized vehicles with exception of those designed for use by handicapped persons, including, without limitation, any golf carts, electric or gas powered scooters, four-wheelers, go-carts, or similar vehicles, on any walking or jogging trails, sidewalks or other pathways intended for pedestrian traffic.

(d) Animals. Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats (the combined number of

dogs and cats not to exceed three(3)), or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units, shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Owners shall clean up behind any Pet while walking such Pet on any Common Property. Pets shall be registered, licensed, and inoculated as required by law.

(e) Nuisance or Offensive Activities. Any noxious or offensive activity which, in the reasonable determination of the Board, tends to cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other Units or persons using the Area of Common Responsibility or other conditions which tend to disturb the peace of or threaten the safety of the occupants of other Units or persons using the Area of Common Responsibility. Without limiting the generality of the foregoing, any activity which emits foul or obnoxious odors outside the Unit, barking dogs, or the use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units (except alarm devices used exclusively for security purposes) are prohibited.

(f) Illegal Activities. Any activity which violates local, state, or federal laws or regulations.

(g) Unsanitary Activities. Any activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit, including, without limitation, accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers. Such containers shall be either screened from view or kept inside, except as reasonably necessary for garbage pick ups;

(h) Burning. Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(i) Firearms/Fireworks. Discharge of firearms, firecrackers, fireworks or other explosive devices.

(j) Dumping. Dumping grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to minimize runoff, and Declarant and builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Storage. On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and for operation of lawn mowers and similar tools or equipment, and the Townhome Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article XI;

(l) Wildlife. Capturing, trapping, or killing of wildlife within the Community, except in circumstances posing an imminent threat to the safety of persons using the Community.

(m) Environment. Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community.

(n) Drainage. Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm drains, except that Declarant and the Association shall have such right; 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;

(o) Irrigation Systems. Installation of any sprinkler or irrigation systems or wells of any type, other than those initially installed by Declarant or a Declarant approved builder, which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Community, except that Declarant and the Townhome Association shall be permitted and shall have the exclusive right and easement to draw water from such sources within the Community for purposes of irrigation and such other purposes as Declarant or the Townhome Association shall deem desirable;

(p) Bodies of Water. Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within the Community, provided, however, that fishing from the shore shall be permitted with appropriate licenses. The Townhome Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes ponds, streams, or other bodies of water within or adjacent to the Community.

(q) Time-Sharing. Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program.

(r) Business or Trade. Any business, trade or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Community; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Community which is noticeable greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents within the Community, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether; (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Community or its use of any Units which it owns within the Community, including the operation of a timeshare or similar program.

(s) Subdivision of Property. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit, after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Units which it owns.

(t) General. Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community;

(u) Unsightly Structures. Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair;

(v) Exterior Antennas. Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; and (iii) antennas designed to receive television broadcast signals (i), (ii), and (iiii), collectively, "Permitted Devices") shall be permitted; however, any such Permitted Device must be placed in the least conspicuous location on the Unit at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property, or is screened from the view of adjacent Units in a manner consistent with the Community-Wide Standard and the Architectural Guidelines. Notwithstanding anything contained herein to the contrary, Declarant and the Townhome Association shall have the right, without obligation, to erect or install and maintain satellite dishes, antennas, or similar devices for the benefit of all or a portion of the Community

(w) Exterior Decorative Items. Installation, display, or presence of exterior decorative items, including, but not limited to, statuary, wishing balls and fountains, but not including flags.

3. Leasing of Units. "Leasing," for purpose of this Paragraph, is defined as regular exclusive occupancy of a Unit by any person, other than the Owner, for which the

Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term; however, in no case shall such term be shorter than twelve months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Governing Document.

EXHIBIT "D"

BK P 638PG453

BYLAWS

OF

MANSFIELD AT PARK WEST, INC.

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BYLAWS

OF

MANSFIELD AT PARK WEST, INC.

A South Carolina Nonprofit Mutual Benefit Corporation

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act, the Board of Directors of Mansfield at Park West, Inc., a South Carolina nonprofit mutual benefit corporation, has or intends to adopt the following Bylaws for such corporation.

Article I
Name, Principal Office, and Definitions

1.1 Name.

The name of the corporation is Mansfield at Park West, Inc. ("Association").

1.2 Principal Office.

The Association's principal office shall be located in Charleston County, South Carolina. The Association may have such other offices, either within or outside the State of South Carolina, as the Board of Directors may determine or as the Association's affairs require.

1.3 Definitions.

The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West filed in the Office of Register of Mesne Conveyances for Charleston County, South Carolina, as it may be supplemented and amended ("Declaration"), unless the context indicates otherwise.

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1 Members.

Each Owner of a Unit (as defined in the Declaration) shall be a Member of the Association. The Association shall have two classes of membership as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference subject to such terms and conditions as set forth in the Declaration and these Bylaws.

2.2 Notice of Ownership.

In order to confirm Membership, upon purchasing a Unit in Mansfield at Park West, the Owner of such Unit shall promptly furnish to the Association a legible copy of the instrument conveying ownership to the Owner, which copy shall be maintained in the records of the Association.

2.3 Place of Meetings.

Association meetings shall be held at the Association's principal office or at such other suitable place convenient to the Members as the Board may designate.

2.4 Annual Meetings.

The first Association meeting, whether a regular or special meeting, shall be held not later than sixty (60) days after the Class II Membership shall cease to exist and be converted to a Class I Membership as set for the Declaration, unless otherwise set by the Declarant. Meetings shall be of the Members. Subsequent regular annual meetings shall be held each year at a time set by the Board.

2.5 Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least twenty-five percent (25%) of the voting interest of the Members. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

2.6 Notice of Meetings.

It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Unit (as shown in the records of the Association) a notice of each annual or special meeting of the Association stating the time and place where it is to be held and in the notice of a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than the Unit, the Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices for annual and special meetings shall be served at least thirty (30) days but not more than sixty (60) days in advance of such meeting.

If mailed, the notice of a meeting shall be deemed to be delivered upon the earliest of: (a) the date received; (b) five (5) days after its deposit in the United States mail, as evidenced by its postmark, if mailed with first class postage affixed; (c) the date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and signed by or on behalf of the addressee; or (d) thirty (30) days after its deposit in the United States mail, as evidenced by the postmark, if mailed with other than first class, registered, or certified postage affixed.

2.7 Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.8 Adjournment of Meetings.

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At any such adjourned meeting, the necessary quorum shall be eighty (80%) percent of the Members who were present either in person or by proxy at the original meeting, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.9 Voting.

The Declaration shall set forth the Member's voting rights; such voting rights provisions are specifically incorporated by this reference.

2.10 Authority of Person Voting.

The Board shall have the authority to determine, in its sole discretion, whether any person claiming to have authority to vote on behalf of or as a Member has such authority. If the Member is a corporation, partnership, limited liability company, trust, or similar entity, the Association may require the person purporting to vote on behalf of such Member to provide reasonable evidence that such person (the "Representative") has authority to vote for such Member. Unless the authority of the Representative is challenged in writing at or before the time of voting, or is challenged orally at the time of voting, the Association may accept such Representative as a person authorized to vote for such Member, regardless of whether evidence of such authority is provided.

2.11 Proxies.

At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Unit, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

2.12 Majority.

As used in these Bylaws, the term "majority" shall mean those votes of the Members, or other group as the context may indicate, totaling more than fifty percent (50%) of the votes of Members at a meeting at which a quorum is present.

2.13 Quorum

At all meetings of Members, regular or special, the presence, in person or by proxy, of at least ten percent (10%) of the total eligible vote of the Association shall constitute a quorum. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. Any amendment to this Section shall comply with the provisions of Section 33-31-1023 of the South Carolina Nonprofit Corporation Act.

2.14 Conduct of Meetings.

The President shall preside over all Association meetings, and the Secretary shall keep the minutes of the meetings and record in the minute book all resolutions adopted and all other transactions occurring at such meetings. Further, Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation, the Declaration, these By-Laws or the statutes of the State of South Carolina.

2.15 Action Without a Meeting.

Any action to be taken at a meeting of the Members, or which may be taken at a meeting of the Members, may be taken without a meeting if written consents setting forth the action so taken are signed by Members holding at least eighty percent (80%) of the Association's voting power. Action taken without a meeting shall be effective on the date that the last consent is executed or, if required, the date Declarant consents to the action unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of the meetings of the Members filed in the permanent records of the Association.

Article III
Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1 Governing Body; Composition.

The business and affairs of the Association shall be governed by a Board of Directors. Each director shall have one equal vote. Except with respect to directors appointed by Declarant during the Declarant Control Period, the directors shall be Members or residents of the

Community; provided, however, that no two persons, being either Owners or residents, of any one Unit may serve on the Board at the same time. A "resident" shall be any person eighteen (18) years of age or older whose principal residence is a Unit within the Community. In the case of a Member which is not an individual, any officer, director, partner, member or manager of a limited liability company, or trust officer of such Member shall be eligible to serve as a director unless a written notice to the Association signed by such Member specifies otherwise; however, no Member may have more than one such representative on the Board at the time, except in the case of directors appointed by Declarant.

3.2 Number of Directors

The initial Board shall consist of three (3) directors designated in the Articles of Incorporation. Thereafter, the Board shall consist of three (3) to seven (7) directors, as provided in Section 3.4 below.

3.3 Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to directors appointed by Declarant during the existence of the Class II Membership, nominations for election to the Board shall be made by a "Nominating Committee." The Nominating Committee shall consist of a Chairman, who shall be a Board member, and three (3) or more Members or representatives of Members. The Board shall appoint the Nominating Committee not less than thirty (30) days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election. The Nominating Committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but in no event less than the number of positions to be filled as provided in Section 3.4 below. Nominations shall also be permitted from the floor. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

3.4 Election and Term of Office.

(a) During Existence of Class II Membership. The Declarant shall have the sole and exclusive right to appoint and to remove the directors of the Association until the first to occur of the following:

(i) one hundred twenty (120) days from when ninety percent (90%) of the Units permitted for development within the Property have certificates of occupancy issued thereon and have been conveyed to Persons other than a successor Declarant;

(ii) twenty (20) years after this Declaration is Recorded; or

(iii) Upon Declarant's surrender in writing of the authority to appoint and remove directors and officers of the Association.

Notwithstanding its right to appoint and remove officers and directors of the Association, Declarant reserves the right to approve or disapprove specified actions of the Association as provided in Section 3.18 herein.

(b) Subsequent to the Existence of Class II Membership. Upon termination of the Class II Membership, directors shall be elected by the Members and hold office as follows:

(i) The Association shall call a special meeting to be held at which Members shall elect three (3) directors to serve until the next annual meeting of the Members. At the next annual meeting of the Members following termination of Class II Membership, the Members shall elect two (2) directors for an initial term of two (2) years and one (1) director for an initial term of one (1) year. At the expiration of the initial term of office of each director, a successor shall be elected to serve for a term of two (2) years. The directors shall hold office until their respective successors shall have been elected by the Association.

(ii) Thereafter, directors shall be elected at the Association's annual meeting. Each Member may cast the entire vote assigned to his Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

(iii) After the Class II Membership terminates, upon the affirmative vote of sixty-seven (67%) percent of the Members, the number of directors may be expanded to any odd number up to and including seven (7) directors. In the event the Members vote to expand the Board, the additional directors shall each serve a term of two (2) years on a staggered basis such that in one year three (3) directors would be elected for a term of two (2) years, and the following year either two (2) or four (4) directors would be elected for a term of two (2) years each, depending on total number of directors.

3.5 Removal of Directors and Vacancies.

At any regular or special meeting of the Association duly called, any one or more directors may be removed, with or without cause, by a vote of a majority of the Members and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Members shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who had three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors at a meeting.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by Declarant. Declarant shall be entitled to appoint or remove Directors at any time during the Declarant Control Period. Thereafter, Declarant may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director it has appointed.

B. Meetings.

3.6 Annual Meetings.

The Board shall hold an annual meeting within ten (10) days following each annual meeting of the Members at such time and place the Board shall fix.

3.7 Regular Meetings.

The Board may hold regular meetings at such time and place a majority of the directors shall determine, but the Board shall hold at least four (4) such meetings during each fiscal year with at least one per quarter. The Board shall give notice of the time and place of a regular meeting to directors not less than six (6) days prior to the meeting; provided, the Board need not give notice of a meeting to any director who has signed a waiver of notice or a written consent to holding the meeting.

3.8 Special Meetings.

The Board may hold special meetings when called by written notice signed by the President, the Vice President, or any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least six (6) business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be delivered or communicated at least seventy-two (72) hours before the time set for the meeting. Notices of such meetings shall also be delivered to the Members contemporaneously with the directors' notices.

3.9 Waiver of Notice.

The transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present; and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10 Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence at such meeting.

3.11 Quorum of Board of Directors.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless the Bylaws or the Declaration specifically provide otherwise. A meeting at which a quorum is present initially may continue to transact business notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact without further notice any business which it might have transacted at the original meeting. Any amendments to this Section shall comply with the provisions of the Section 33-31-1024 of the South Carolina Nonprofit Corporation Act.

3.12 Compensation.

Directors shall not receive any compensation from the Association for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director makes his or her interest known to the Board prior to entering into such contract and a majority of the Board, excluding the interested director, approves such contract.

3.13 Conduct of Meetings.

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 Open Meetings.

Subject to the provisions of Section 3.15, all Board meetings shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests permission for that person to speak. In such case, the President may limit the time such person may speak. Notwithstanding the above, the President may adjourn any

Board meeting and reconvene in executive session, and may exclude persons other than directors. Only the following matters are open for discussion in executive session:

(a) matters pertaining to Association employees or involving the employment, promotion, discipline, or dismissal of an officer, agent or employee of the Association;

(b) consultation with legal counsel regarding disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) investigative proceedings concerning possible or actual criminal conduct;

(d) matters subject to specific constitutional, statutory; or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and

(e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

3.15 Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors, or any action that may be taken at a meeting of the directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.16 Powers.

The Board shall have all of the powers and duties necessary for managing the business and affairs of the Association and for performing all responsibilities and exercising all of the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things not limited by the Governing Documents or South Carolina law to be done and exercised exclusively by the Members.

3.17 Duties.

The Board's duties shall include, without limitation:

(a) causing to be prepared and adopting, in accordance with the Declaration, an annual budget establishing each Member's share of the Common Expenses and any Neighborhood Expenses;

(b) levying and collecting such assessments from the Members;

(c) providing for the operation, care, upkeep, and maintenance of the Area of

Common Responsibility and entering into agreements with adjacent property owners to allocate maintenance responsibilities and costs of certain public rights-of-way and other property within or adjacent to the Community;

(d) designating, hiring, and dismissing the personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' business judgment, in depositories other than banks;

(f) making and amending Rules and Regulations in accordance with the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in Section 8.5 of the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(o) indemnifying an Association director, officer , or committee member, or former Association director, officer, or committee member to the extent such indemnity is required by South Carolina law, the Articles of Incorporation, or the Declaration; and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

3.18 Right of Declarant to Disapprove Actions.

During Declarant Annexation Period as set forth in the Declaration, Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in Declarant's sole judgment, would tend to impair rights of Declarant or any builders approved by Declarant under the Declaration or these Bylaws, interfere with the development or construction of any portion of the Community, or diminish the level of services the Association provides.

(a) The Association shall give Declarant 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 it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.7, 3.8, 3.9, and 3.10 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 said meeting; and

(b) The Association shall give Declarant the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproved 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 shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. Declarant, acting through any officer, 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. 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 the Board, the Association, or any committee. 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 repair or any expenditure required to comply with applicable laws and regulations.

3.19 Management.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. Declarant or an affiliate of Declarant may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.20 Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) the Association's cash accounts shall not be commingled with any other accounts;

(d) the managing agent shall accept no remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, services fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) the managing agent shall disclose to the Board promptly any financial or other interest which the managing agent may have in any firm providing goods or services to the Association;

(f) an annual report consisting of at least the following shall be made available to all Members within one-hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; however, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Declarant Control Period, the annual report shall include certified financial statement.

3.21 Borrowing.

The Association shall have the power to borrow money for any legal purpose; however, the Board shall obtain Member approval in the same manner provided in Section 9.2 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed twenty percent (20%) of the Association's budgeted gross expenses for that fiscal year. No Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least eighty percent (80%) of the total vote in the Association.

3.22 Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with residential or nonresidential owners' associations within the outside the Community; however, any common management agreement shall require the Board's consent.

3.23 Enforcement.

In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Governing Documents. In addition, the Board may suspend any services the Association provides to an Owner or an Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the Association shall first assess the fine against the occupant, tenant, employee, guest, or invitee; however, if the occupant does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Association. The Board's failure to enforce any provision of the Governing Documents shall not be deemed a waiver of the Board's right to do so thereafter.

(a) Notice. Prior to imposition of certain sanctions requiring notice under the Declaration, the Board, or its delegate, shall serve the alleged violator with written notice describing (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; however, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self help (specifically including, but not limited to, towing vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIII of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessary compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or Person responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes or exercising this power of self help shall not be deemed as trespass.

3.24 Board Standards.

While conducting the Association's business affairs, the Board shall be protected by the business judgment rule. The business judgment rule protects a director appointed by Declarant from personal liability so long as the director: (i) serves in a manner the director believes to be in the best interests of the Association and the Members; or (ii) serves in good faith. The business judgment rule protects a director not appointed by Declarant from liability for actions taken or omissions made in the performance of such director's duties, except for liability for wanton and willful acts or omissions.

In fulfilling its governance responsibilities, the Board's actions shall be governed and tested by the rule of reasonableness. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

The burden of proof in any challenge to an action or inaction by a director shall be on the party asserting liability.

The operational standards of the Board and any committee the Board appoints shall be the requirements set forth in the Governing Documents or the minimum standards which Declarant, the Board, and the Architectural Review Committee may establish. Such standard shall, in all cases, meet or exceed the standards set by Declarant and the Board during the Declarant Control Period. Operational standards may evolve as the needs and demands of the Community change.

3.25 Board Training Seminar.

Each director is encouraged to complete a board training seminar within such director's first six months of directorship. Such seminar shall educate the directors about their responsibilities and duties. The seminar may be in live, video or audio tape, or other format.

Article IV
Officers

4.1 Officers.

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two (2) or more offices, except the offices of the President and Secretary. Moreover, the Secretary shall be responsible for preparing minutes of all directors' and Members' meetings and for authenticating records of the corporation.

4.2 Election and Term of Office.

The Board shall elect the officers of the Association at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Association's interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Secretary shall prepare, execute, certify, and Record amendments to the Declaration as provided in Section 16.3 of the Declaration. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

4.5 Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at

any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks and other Association instruments shall be executed by at least two (2) officers or by such other person or persons as a Board resolution may designate.

4.7 Compensation.

Officers' compensation shall be subject to the same limitations as directors' compensation under Section 3.12.

Article V
Committees

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate be resolution. Each committee shall operate in accordance with the terms of such resolution.

Article VI
Miscellaneous

6.1 Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order (the then current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law or the Governing Documents.

6.3 Conflicts.

If there are conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any

Member, or the duly appointed representative of any of the foregoing, at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, Bylaws, and Articles of Incorporation, including any amendments, any Supplemental Declarations, the Rules and Regulations, the membership register, books of account, and the minutes of meetings of the Members, the Board and committees. The Board shall provide for such inspection to take place at the Association's office or at such at other place within the Community as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right, at any reasonable time, to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

6.5 Notices.

Unless the Declaration or these Bylaws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendments.

(a) By Declarant. During the Declarant Control Period, Declarant unilaterally may amend these Bylaws for any purpose. Thereafter, Declarant or the Board unilaterally may amend these Bylaws at any time, and from time to time, if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender,

purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; provided, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing greater than fifty percent (50%) of the total vote in the Association, and the consent of Declarant, so long as Declarant during Declarant Annexation Period. In addition, the approval requirements set forth in Article XVII of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) FHA/VA Approval of Amendments. The U.S. Department of Veterans Affairs (if it is guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such Mortgages) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such Mortgages) shall have the right to veto amendments to these Bylaws during the Declarant Control Period.

(d) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon Recordation, unless the amendment specifies a later effective date. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. The Secretary shall prepare, execute, certify, and Record amendments to these Bylaws.

No amendment may remove, revoke, or modify any of Declarant's rights or privileges without its written consent during the Declarant Annexation Period.

SIGNATURE PAGE TO FOLLOW

BK P 638PG474

Certification

I, undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Mansfield at Park West, Inc., a South Carolina Non Profit Corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 10th day of September. 2007.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 10th day of September, 2007

[SEAL]

Herbert P. French
Secretary

BK P 638PG475

RECORDER'S PAGE

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WILLCOX, BUYCK, & WILLIAMS
1991 GLENN'S BAY ROAD
SURFSIDE BEACH SC 29575

Number of Pages:

67

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September 13, 2007

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Charlie Lybrand, Register
Charleston County, SC

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BP0032997

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

WHEREAS, D.R. Horton, Inc. as Declarant, recorded that certain Declaration of Covenants, Conditions and Restriction for Mansfield at Park West dated September 10, 2007 and recorded September 13, 2007 in Deed Book P638 at Page 409 Charleston County records (the "Declaration"); and,

WHEREAS, while its Class II Membership exists, the Declarant shall have the right, pursuant to Section 18.2 of the Declaration, to unilaterally amend any provision of the Declaration so long as such amendment does not materially alter or change any Owner's right to the use and enjoyment of its Unit as determined by Declarant; and,

WHEREAS, Class II Membership in the homeowners association, "Mansfield at Park West, Inc." (the "Townhome Association") exists as of the date of this First Amendment; and,

WHEREAS, the amendments below do not materially alter or change any Owner's right to the use and enjoyment of its Unit; and,

WHEREAS, pursuant to Section 10.3 of the Declaration, the Association is obligated to collect a capital contribution from the purchaser of all Units for initial sales and resales in the amount of Two Hundred Fifty and no/100 ($250.00) Dollars; and,

WHEREAS, the Declarant now wishes to increase the capital contribution on initial sales to Five Hundred and no/100 ($500.00) Dollars while the capital contribution on resales shall remain unchanged; and

WHEREAS, Article X of the Declaration generally sets forth the rights and obligations of the Townhome Association and Owners with regard to assessments and Declarant wishes to clarify certain provisions therein.

NOW THEREFORE, for and in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant and the Association hereby declare and agree that the real property previously submitted to the Declaration, is and shall be held, transferred, sold and conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth and as already set forth in the Declaration, including all amendments thereto, and that said Declaration shall be amended as follows:

PROVISIONS IN THE DECLARATION

1. It is hereby agreed that the aforesaid Declaration, including all previous amendments thereto, shall be and the same is hereby ratified, confirmed and adopted in all respects and all particulars as to each and every provision thereof except as to those provisions expressly amended as set forth herein and shall be, and hereby are, binding upon all present and future Owners their mortgagees and lien holders. It is further agreed that this document shall, and does hereby constitute the First Amendment to the aforesaid Declaration with regard to the matters and things set forth herein.

2. This First Amendment to the Declaration shall be binding upon and inure to the benefit of all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner thereof.

AMENDMENTS

1. Section 10.3 entitled "Working Capital" shall be deleted in its entirety and in its place and stead shall be inserted the following:

10.3 Working Capital.

(a) Initial Sales.

Upon acquisition of record title to a Unit by the first Owner thereof, other than Declarant, a payment shall be made by or on behalf of the purchaser to the **working capital of the Townhome Association in an amount equal to Five Hundred and no/100 ($500.00) Dollars per Unit**. This amount shall be in addition to, not in lieu of, the General Assessment attributable to said Unit, and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow at closing and disbursed therefrom to the Townhome Association. The Townhome Association shall deposit this amount into the operating account of the Townhome Association for use in covering operating expenses and other expenses incurred by the Townhome Association pursuant to this Declaration and the By-Laws, including but no limited to expenses incurred by Declarant in providing infrastructure or other Common Area to the Community. This amount may be increased or decreased in the sole and exclusive discretion of the Board; provided, however, that in no event shall this initial contribution equal more than the annual General Assessment for the year in which the acquisition of title by the first Owner, other than Declarant, occurs.

(b) Transfer Fee on Resales.

Each time a Unit is sold, transferred or otherwise conveyed to a new Owner, the purchaser of the Unit shall pay to the Townhome Association at the time of settlement **a transfer**

fee in the amount of Two Hundred Fifty and no/100 ($250.00) Dollars. This amount shall be deposited into the purchase and sales escrow at closing and disbursed therefrom to the Townhome Association. The Townhome Association shall deposit this amount into the operating account of the Townhome Association for any legitimate purposes as the Board of Directors may determine, but said amounts shall not be considered as advance payments of general assessments. This provision shall not apply to the following transfers: (I) involuntary conveyances; (ii) conveyances pursuant to testacy or as a part of the Owner's estate planning; or (iii) conveyances between family members when no consideration is paid.

2. Section 10.6 entitled "Lien for Assessments" shall be deleted in its entirety and in its place and stead shall be inserted the following:

10.6 Lien for Assessments.

Subject to the limitations of any applicable provisions of South Carolina law, the Townhome Association shall have a statutory lien against each Unit to secure payment of any delinquent assessments, including but not limited to General, Specific, Special and Capital assessments, as well as interest, late charges, and costs of collection (including reasonable attorneys' fees). Such lien shall be perfected upon the Recordation of this Amendment.

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

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

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

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 the Mortgagee's foreclosure, except as otherwise provided in this Section. Uncollected assessments shall be deemed Common Expenses collectible from Owners of all Units subject to

assessment under this Article X, including such acquirer, its successors, and assigns. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors, and assigns

3. The following Sections shall be added to Article X of the Declaration:

10.11 Authority To Assess Owners; Time of Payment.

Declarant hereby establishes and the Townhome Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay all assessments levied against each Unit shall commence as to each Unit on the first day of the month in which the sale of a Unit to a Person other than Declarant occurs. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

The Board may require advance payment of assessments at closing of the transfer of title to a Unit and/or impose special requirements for Owners with a history of delinquent payment. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

10.12 Personal Obligation for Assessments.

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

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

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

10.13 Exempt Property.

The following real property shall be exempt from payment of General Assessments, Specific Assessments, Special Assessments, and Capital Assessments:

(a) all Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility; and

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

(c) any and all property owned by the Declarant.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, D.R. Horton, Inc. by its duly authorized officer, has executed this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West this 23rd day of January, 2009.

Sara Dick

D. R. HORTON, INC.

By: _____

R. Doug Brown
Division Vice President

Marie L Barnett

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public for South Carolina, do hereby certify that R. Doug Brown as Division Vice President of D.R. Horton, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of said corporation.

Witness my hand and official seal this 23rd day of January, 2009.

Marie L Barnett

Notary Public of South Carolina

My Commission Expires: 9/30/15

By executing below, Mansfield at Park West, Inc. does hereby acknowledge its obligation to collect assessments as provided herein and acknowledge this the First Amendment to the Declaration.

MANSFIELD AT PARK WEST, INC.

Kim Watts

By: _____
Mitchell M. Flannery
President

Marie L. Barnett

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public for South Carolina, do hereby certify that Mitchell M. Flannery as President of Mansfield at Park West, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of said corporation.

Witness my hand and official seal this 23rd day of January, 2009

Marie L. Barnett
Notary Public of South Carolina

MARIE L. BARNETT NOTARY PUBLIC SOUTH CAROLINA

My Commission Expires: 9/30/15

RECORDER'S PAGE

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0032	997	Misc/Amend

Charlie Lybrand, Register
Charleston County, SC

MAKER:
D R HORTON INC

RECIPIENT:
MANSFIELD AT PK WEST

Original Book: P638

Original Page: 409

# of Pages: 8
# of Sats:
# of References:

Note:

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Extra Reference Cost	$ -
Extra Pages	$ 3.00
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EXHIBIT D

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN THE COURT OF COMMON PLEAS** **2021-CP-10–1215** **CONSENT ORDER FOR ARBITRATION**

This matter comes before the Court upon the Motion to Compel Arbitration of the Plaintiff, Mansfield at Park West, Inc., and the Motion to Dismiss of the Defendant, D.R. Horton, Inc. The Plaintiff and Defendant agree and consent to resolve all claims among the parties by binding arbitration.

Plaintiff and Defendant agree and consent to Plaintiff's claims against D.R. Horton, Inc., being referred to binding arbitration with a sole arbitrator to be agreed to upon the parties, and to the extent the parties cannot agree on an arbitrator then the Court will select the arbitrator.

Accordingly, and upon motion and by consent of the parties, IT IS HEREBY ORDERED that:

1) All said issues in dispute between Plaintiff and Defendant are referred to and shall be resolved by binding arbitration, including the Defendant D.R. Horton's Motion to Dismiss, with the arbitrator to also determine all procedural and scheduling issues with the arbitration.
2) The arbitration shall further be conducted by a sole arbitrator to be agreed to upon by the parties pursuant to the laws of the State of South Carolina and to the extent the parties cannot agree on an arbitrator then the Court will select the arbitrator.

3) The claims in this case are hereby stayed pending the arbitration, and this Court shall retain jurisdiction of this matter.

AND IT IS SO ORDERED.

WE SO MOVE:

THE CHAKERIS LAW FIRM

By: s/ *Alicia D. Pullano*
John T. Chakeris
S.C. Bar No.: 7060
Alicia D. Pullano
S.C. Bar No.: 102801
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
(843) 853-5678
john@chakerislawfirm.com
alicia@chakerislawfirm.com

Attorneys for Plaintiff

WE SO CONSENT:

By: s/ *Jason M. Imhoff (with consent given)*
John T. Crawford, Jr., Esquire
S.C. Bar No.: 69355
Jason M. Imhoff, Esquire
S.C. Bar No.: 69682
F. James Warmoth, Esquire
S.C. Bar No.: 101072
Kenison, Dudley & Crawford, LLC
704 E McBee Ave.
Greenville, SC 29601
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warmoth@conlaw.com

Attorneys for D.R. Horton, Inc.

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Consent Order

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

EXHIBIT E

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN ARBITRATION** **AWARD**

This matter came before me on July 26 and 31, 2023, for an arbitration hearing pursuant to the Consent Order dated July 27, 2021, and entered by the Honorable R. Ferrell Cothran, Jr. The Plaintiff alleges that the Defendant was grossly negligent in the construction of the townhomes at Mansfield at Park West as it relates to the installation of cementitious siding (siding), roof shingles, J channel windows, and the premature deterioration of the wood fencing. Plaintiff contends these defects violate the building code, manufacturers' installation instructions and industry standards. Defendant admits that there may be violations of manufacture's installation instructions and the building code but argues any such violations were only minor deviations and immaterial. Defendant further argues that any water intrusion, damage below window locations and/or deteriorated fencing are a result of lack of maintenance which is not its responsibility, and the overall performance of the buildings is satisfactory. Additionally, the Defendant argues the Plaintiff lacks standing to pursue this claim and that the Statute of Repose bars any recovery as it was not grossly negligent. Both parties introduced substantial evidence of the cost of repair for the siding, shingles and J Channel by their respective qualified experts.

I. STANDING

I have reviewed the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West, along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. After such consideration, I find the Plaintiff has standing to pursue the claims it has asserted.

II. STATUTE OF REPOSE

Plaintiff presented evidence and testimony by qualified experts of violations of the building code, manufacturers' installation instructions and industry standards that constituted evidence of gross negligence. Through the expert testimony of Russell T. Mease, P.E.(Mease) and Scott W. Dow(Dow), regarding code requirements relating to the installation of the cementitious siding, the roofing shingles and the windows, the plaintiff's presented proof that the Defendant engaged in grossly negligent conduct with respect the installation of those components of the project. In his testimony, Mease established that the defendant had an obligation to ensure that the project would be built in compliance with the applicable building codes. He also testified that the manufacturer's instructions are part of the building code.

As to the siding, Mease and Dow testified that the applicable building code (including the manufacturer's instructions) required that the fasteners (nails) were to be nailed into the studs. On inspection Mease found that 87% of the fasteners were not nailed into the studs (Defendant's expert did not dispute this estimate). Defendant's superintendent, John Disk testified that at the time the project was under construction, he was of the belief that the building code and manufactures instructions required that the siding be nailed into the studs. He so testified in his deposition. In his testimony at the arbitration hearing before for me, he stated that he had changed his opinion and had decided that the siding was not required to be nailed into the studs. Defendant's

Vice President for Operations of Charleston and Hilton Head, Ronald Keith Bunner also testified that at the time the project was under construction that he was of the opinion the siding was supposed to be nailed into the studs and expressed that opinion in his deposition. He too changed his mind and testified at the arbitration hearing that nailing into the studs is not required. Although the defendant did not perform the installation itself, it had a duty to supervise the responsible subcontractor. Plaintiff presented expert testimony from Dow that the Defendant had a duty to properly supervise and oversee the project, this would include periodic inspection of the siding, roof and window installations. He testified that in his opinion the Defendant was grossly negligent as to the supervision of the installation of the siding, roofs and windows. According to the testimony, a supervisor would only have had to step inside the building from time to time to observe the nails protruding, having not struck the studs. To have failed to detect a small percentage of improper nailing might constitute negligence. I find that to have failed to detect 87% of the code violations regarding the nailing constitutes gross negligence. According to the testimony and evidence, despite the improper nailing, most boards have stayed in place and are not allowing water intrusion. However, plaintiffs experts testified that nailing into the studs enhances the structural integrity of the buildings to guard against damage from extreme wind conditions which exist in this area. The damage created by the nearly complete failure to meet the building code and manufacturers requirements is that the buildings are more subject to failure in extreme wind conditions.

Regarding the roof installation, plaintiffs' experts testified that 86% of the roof shingles were nailed improperly, in violation of code requirements. Defendant did not present evidence to challenge this percentage of failure. The defendant takes the position that since the roofs have only failed in a limited number of areas and that limited evidence of water intrusion has been found,

that the improper nailing has caused no appreciable damage. However, the plaintiffs' expert testimony established that the shingles are more prone to fail in high wind conditions than they would be if they had been nailed properly. The defendant was not directly responsible for the installation of the roof. However, the expert testimony established that the defendant had supervisory responsibility. Failure to detect a small percentage of the roof nailing code violations might be understandable or may have constituted mere negligence. However, I find that failure to detect that 86% of the roofing nails were nailed in violation of the building code requirements constitutes gross negligence. Defendant argues that the shingles have substantially performed their function in that there have been no widespread leaks from the roof. Defendant also points out that the warranty on the shingles is nearing its expiration. The testimony establishes that there have been some shingles that have been replaced over time. Some reduction in the cost of replacement is appropriate and will be reflected in the award.

Regarding the windows, Plaintiffs' experts presented testimony and evidence that the windows installed throughout the project were not appropriate for use with cementitious siding. Plaintiffs' construction expert, Dow, testified that as a result of the incompatibility of the windows with the siding, the windows cannot be properly maintained. The Defense presented expert testimony that a satisfactory fix for this problem could be designed. This testimony is unpersuasive. The superintendent's conduct in failing to detect that 100% of the windows installed in this project were not designed to be installed with cementitious board, but rather were designed to be installed with vinyl siding, constitutes gross negligence.

Regarding the fencing, Plaintiffs' presented photographs of fencing which shows substantial rot in some places. However, the record does not support a finding of negligence or gross negligence on the part of the Defendant with regard to the fencing.

I find the Plaintiff has met the gross negligence exception of S.C. Code Ann. § 15-3-670, and therefore, the Statute of Repose is not a complete bar to the Plaintiff's claims as to the siding, roof, and windows.

III. ACTUAL DAMAGES

The Plaintiff is awarded actual damages in the amount of $3,057,112.48 against D.R. Horton, Inc., for its claims of gross negligence related to the cementitious siding, roof shingles and J channel windows.

With respect to the claims relating to the fencing I find in favor to the Defendant DR Horton and award no damages.

Thomas J. Wills, IV
Arbitrator

August 22, 2023

EXHIBIT F

STATE OF SOUTH CAROLINA	)	IN THE ARBITRATION OF
	)	
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
	)	
MANSFIELD AT PARK WEST, INC.,	)	
	)	**DEFENDANT D.R. HORTON INC.'S**
	)	**NOTICE OF MOTION AND MOTION**
PLAINTIFF,	)	**FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
D.R. HORTON, INC.,	)	
	)	
DEFENDANT.	)	
_____	)	

TO: PLAINTIFF MANSFIELD AT PARK WEST, INC. AND ITS COUNSEL OF RECORD JOHN T. CHAKERIS, ESQUIRE, ALICIA D. PULLANO, ESQUIRE, AND W. JEFFERSON LEATH, JR., ESQUIRE:

PLEASE TAKE NOTICE THAT ten (10) days after the service of this Notice upon you, or as soon thereafter as counsel may be heard, the undersigned attorney for Defendant D.R. Horton, Inc. (hereinafter "D.R. Horton"), will move for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP") granting summary judgment as to Plaintiff's claims for negligence and gross negligence, breach of implied and express warranties, unfair trade practices, and breach of fiduciary duty.

1. <u>Real Party In Interest</u>

Plaintiff Mansfield at Park West, Inc., is not the Real Party in Interest, nor does it have the right to bring the claims on behalf of the individual homeowners. Pursuant to The Covenants and Restrictions, the individual homeowners have the right and obligation to maintain and repair the units. On, March 1, 2021, immediately before filling the present lawsuit, the Homeowners attempted to amend the Covenants and Restrictions to remove sections and assign the right to bring this lawsuit to Plaintiff. That amendment is ineffective and contrary to the terms and conditions of

the Covenants and Restrictions and the lawsuit should be dismissed.

2. Statute of Repose

This case involves allege defects in the construction of a townhome community known as Mansfield at Park West ("Mansfield"). Plaintiff filed suit against D.R. Horton on March 12, 2021. The statute of repose for alleged defective improvements to real property is 8 years after "substantial completion of the improvement." S.C. Code § 15-3-640. Pursuant to Section 15-3-640, "a certificate of occupancy … in the case of new construction … shall constitute proof of substantial completion[.]" As noted by the Supreme Court of South Carolina in Lawrence v. General Panel Corp., "the statute of repose begins to run *at the latest* on the date of the certificate of occupancy[.]" 425 S.C. 398, 822 S.E.2d 800 (2019) (emphasis added). Thus, Plaintiff's claims relating to the townhomes that were issued a certificate of occupancy prior to March 12, 2013, are time-barred. Certificates of Occupancy were issued for the townhomes between 2009 and 2012.

Moreover, the exceptions to the statue of repose defense contained in S.C. Code § 15-3-670 are inapplicable to these townhomes. Pursuant to S.C. Code § 15-3-670(A), the statute of repose is not applicable to a defense to claims of "fraud, gross negligence, or recklessness." There is no evidence to support Plaintiff's claim for gross negligence and recklessness. Further, the concealment exception is inapplicable as there is no evidence D.R. Horton concealed a cause of action from Plaintiff. *See* S.C. Ann. § 15-3-670(A) ("The limitations provided by 15-3-640 through 15-3-660 are not available as a defense … to a person who conceals any such cause of action"). *See also* Pier View Condominium Ass'n, Inc. v. Johns Manville, Inc., 2022 WL 632933 (D.S.C. March 4, 2022) (concealment exception to statute of repose requires affirmative acts to mislead or hide information that a cause of action may exist as opposed to the simple nondisclosure of defects). Lastly, no toxic, harmful, or injury-producing substance, element or particle allegedly

resulting in property damage necessary to establish an exception under S.C. Code Ann. § 15-3-670(C) has been identified.

Based on the foregoing, the 8-year statute of repose bars all of Plaintiff's claims, and D.R. Horton is entitled to summary judgment.

3. Breach of Warranty of Habitability

Plaintiff also cannot maintain an action against D.R. Horton for breach of warranty of habitability as Plaintiff did not purchase any of the townhomes. The warranty of habitability arises from the sale of the home. *See* Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E2d 730 (1989). *See also* Lane v. Trenholm Bldg. Co., 267 S.C. 497, 229 S.E.2d 728 (1976) and Avari v. Shaw, 289 S.C. 161, 34 S.E.2d 715 (1986). Because Plaintiff did not purchase the townhomes, Plaintiff's claim for breach of warranty of habitability fails, and D.R. Horton is entitled to judgment as a matter of law.

4. Acceptance of Defects by New Owners

For any townhomes that have been sold since there was knowledge of the alleged defects, those claims would be barred against D.R. Horton.

5. Unfair Trade Practices Act

Plaintiff cannot make a *prima facie* case for the violation of the Unfair Trade Practices Act ("UTPA"). The UTPA declares that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commence are … unlawful." S.C. Code Ann. § 39-5-20(a) (1985). In order "[t]o recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." RFT Mgmt. Co., L.L.C. v. Tinsley &

Adams L.L.P., 399 S.C. 322, 337, 732 S.E.2d 166, 174 (2012) (quoting Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)).

6. Breach of Fiduciary Duty

Plaintiff cannot make a *prima facie* case for breach of fiduciary duty and, therefore, D.R. Horton is entitled to summary judgment on the clam. To establish a claim for bready of fiduciary duty under South Carolina law, "the plaintiff must prove (1) *the existence of a fiduciary duty*, (2) a breach of the duty *owed to plaintiff by the defendant*, and (3) damages proximately resulting from the wrongful conduct of the defendant." RTF Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-336, 732 S.E.2d 166, 173 (2012) (emphasis added). Plaintiff alleges that D.R. Horton owed "fiduciary and fiduciary-like duties" as a developer and seller. (Complaint, ¶ 25). However, there is no evidence to support a finding of a fiduciary duty, much less a breach of that duty. Therefore, D.R. Horton is entitled to judgment as a matter of law on Plaintiff's breach of fiduciary duty claim.

CONCLUSION

Pursuant to South Carolina Rule of Civil Procedure Rule 10(c), D.R. Horton incorporates by reference its arguments submitted in its Brief in Support of its Motion to Dismiss and in Opposition to Plaintiff's Motion to Compel Arbitration electronically filed on July 15, 2021.This Motion shall be further based upon the statutory and common laws of the State of South Carolina, the SCRCP, the pleadings heretofore filed, and any and all affidavits, memorandums and supporting material which may be served on or before the date of the hearing for this motion.

The undersigned affirms pursuant to Rule 11 of the SCRCP that consultation with opposing counsel is not required prior to the filing of this Motion.

WHEREFORE, Defendant D.R. Horton, Inc. shall, and hereby does, move the Arbitrator

for an Order granting summary judgment in favor of D.R. Horton as to all of Plaintiff's claims upon the grounds that the claims are barred by the statute of repose. D.R. Horton further moves the Arbitrator for an Order granting summary judgment on the grounds that there exists no genuine issue as to any material fact and that D.R. Horton is entitled to judgment as a matter of law in favor.

KENISON, DUDLEY, & CRAWFORD, LLC

s/ Jason M. Imhoff
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Counsel for Defendant D.R. Horton Inc.

August 10, 2022

STATE OF SOUTH CAROLINA	)	IN THE ARBITRATION OF
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
	)	
MANSFIELD AT PARK WEST, INC.,	)	
	)	**DEFENDANT D.R. HORTON INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**
PLAINTIFF,	)	
	)	
vs.	)	
	)	
D.R. HORTON, INC.,	)	
	)	
DEFENDANT.	)	
_____	)	

Defendant D.R. Horton, Inc. ("D.R. Horton") hereby submits this Memorandum in Support of its Motion for Summary Judgment showing as follows:

I. STATEMENT OF FACTS

Plaintiff is the homeowners' association for a townhome community known as Mansfield at Park West located in Charleston County, South Carolina ("Mansfield"). Mansfield consists of six buildings and twenty-six units. (R. Mease Depo., 26:18-27:14, 52:19-53:17). During construction, permits and certificates of occupancy were issued for each individual unit. (R. Mease Depo., 28:5-15). The certificates of occupancy for the townhomes were issued between 2009 and 2011. (R. Mease Depo., 56:3-8, Exhibit 3).[1]

Plaintiff alleges various defects and deficiencies relative to the development, construction and/or repair of the townhome units at Mansfield. (*See generally*, Plaintiff's Complaint).[2]

[1] A copy of the spreadsheet compiled by Plaintiff's Expert, Russel Mease, outlining the dates that the permits and the certificates of occupancy were issued for each townhome is attached hereto as Exhibit A. Copies of the certificates of occupancy (the "Certificates of Occupancy") for each townhome are attached hereto as Exhibit B.

[2] Plaintiff's Complaint also alleges that there were issues with the common areas in Mansfield, but Plaintiff's expert did not evaluate the clubhouse. (R. Mease Depo., 54:11-19).

Specifically, Plaintiff's expert, Russell Mease, has opined that there are construction deficiencies with the roofing, the siding, the fences and the windows. (R. Mease Depo., 43:8-14). Mr. Mease concedes that many of these issues are "common" and "typical" in construction.

- With regard to overdriven fasteners, Mr. Mease testified that "this is a common problem." (R. Mease Depo., 73:11-17).
- Overdriven and angle driven nails are common defect that Mr. Mease has seen over the course of his thirty-year career with installation of shingles. (R. Mease Depo., 107:16-109:1). In fact, 85 to 90 percent of the time, he sees overdriven and angle driven nails. (Id.)
- Having the fasteners and plank siding too far apart or not in the framing is "one of the typical conditions [he] finds in a defective installation." (R. Mease Depo., 114:24-115:7).
- Concerning water getting into a building because of an alleged defect with the installation of the windows, Mr. Mease "see[s] this condition all the time. It is a very common thing that [he] runs across." Additionally, Mr. Mease has "stacks and stacks of photographs that show [this] damage[.]" (R. Mease Depo., 131:1-3).

Mr. Mease could only point to one defect as being what he referred to as a "gross dereliction of duty" – the selection of one of the siding materials. (R. Mease Depo., 39:21-40:5). One of the siding materials was unlabeled, and Mr. Mease believes that it is a product that does not belong in the wind zone. (R. Mease Depo., 39:21-40:5, 57:21-59:18, 165:6-23). However, Mr. Mease cannot prove that the unlabeled siding is that product. (Id.). Mr. Mease also testified that he does not know who selected the siding and whether D.R. Horton took any part in that decision. (*Id*.).

Plaintiff contends that it has standing to bring this action, instead of the individual homeowners, by virtue of an amendment to the Declaration of Covenants, Conditions and Restrictions ("CCRs") filed a mere three days before this action was filed. Pursuant to the original CCRs, the individual homeowners have the right and obligation to maintain and repair the units. (A copy of the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West is attached hereto as Exhibit C). The original CCRs provide that:

> Each Owner shall maintain his or her Unit and all structures, parking areas, backyards and other improvements comprising the Unit in a manner consistent with the standards of Mansfield at Park West and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association[.] ... Each Owner's maintenance responsibility shall include, but shall not be necessarily limited to, the following:
>
> ...
>
> (b) maintenance, repair, and replacement as necessary of the exterior surfaces of the Units ... and,
>
> (e) maintenance, repair and replacement as necessary of the roof including shingle and roof decking of the Unit.

Exhibit C, CCRs, § 5.2.

On March 1, 2021, the homeowners attempted to amend the CCRs and assign the right to bring this lawsuit to Plaintiff. (A copy of the Second Amendment to Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West is attached hereto as Exhibit D) (the "Second Amendment"). Specifically, the Second Amendment attempted to modify the original CCRs, in pertinent part, by adding the following language:

> **"Townhome Association's Responsibility"**:
>
> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof[.]

Exhibit D. The Second Amendment was filed by counsel for Plaintiff on March 9, 2021. This case was filed three days later on March 12, 2021.

Plaintiff brings the following causes of action against D.R. Horton: (1) negligence, gross negligence, carelessness, recklessness, willfulness and wantonness; (2) breach of warranty of habitability, breach of warranty against latent defects, breach of warranty for workmanlike services, breach of warranty for fitness for a particular purpose, breach of warranty of merchantability and serviceability, and breach of express warranty; (3) unfair trade practices; and (4) breach of fiduciary duty. As outlined in the Complaint, Plaintiff contends that the claims are not barred by the eight-year statute of repose set forth in S.C. Code § 15-4-640 (the "Statute of Repose") because the townhomes were substantially completed within that time period. In the alternative, Plaintiff contends that this action is not subject to the Statute of Repose because: (1) D.R. Horton is guilty of fraud, gross negligence or recklessness; and/or (2) the damages claimed were by their nature not discoverable in the exercise of reasonable diligence at the time of their occurrence and were the result of exposure to a harmful or injury producing substance, element or particle over a period of time. (Plaintiff's Complaint, ¶ 6).

The Complaint was filed on March 12, 2021. Therefore, absent an applicable exception, Plaintiff's claims relating to the townhomes that were substantially complete prior to March 12, 2013 are barred by the Statute of Repose. As noted above, the Certificates of Occupancy were issued for the townhomes between 2009 and 2011. (*See* Exhibits A and B). Because the townhomes were substantially completed prior to March 12, 2013 and there is no applicable exception, Plaintiff's claims are barred by the Statute of Repose.

Additionally, Plaintiff lacks standing to bring this action because the Second Amendment was ineffective. In the alternative, should the Court determine that Plaintiff's claims are not barred

by the Statute of Repose and that Plaintiff has standing, D.R. Horton is entitled to summary judgment Plaintiff's claims for breach of warranty of habitability, unfair trade practices and breach of fiduciary duty. Moreover, any claims for townhomes that have been sold since there was knowledge of the alleged defects are barred against D.R. Horton. For the reasons set forth herein, D.R. Horton is entitled to summary judgment.

II. ARGUMENT & CITATION OF AUTHORITY

1. Summary Judgment Standard

Rule 56(c) of the South Carolina Rules of Civil Procedure ("SCRCP") require that summary judgment be granted:

> if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Rule 56(c), SCRCP. In determining whether summary judgment is proper, the Court must view all evidence in the light most favorable to the non-moving party. Bar v. City of Rock Hill, 330 S.C. 640, 642, 500 S.E.2d 157, 158 (Ct. App. 1998). Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Silvester v. Spring Valley Country Club, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001).

A party seeking summary judgment has the initial burden of demonstrating the absence of the genuine issue of material fact. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This burden may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. Id. (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt

as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial." Id. (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)). The party opposing summary judgment cannot simply rest of mere allegations or denials contained in the pleadings. George v. Empire Fire & Marine Ins. Co., 545 S.E.2d 500 (S.C. 2001). More than a mere scintilla is required to overcome summary judgment. Bravis v. Dunbar, 449 S.E.2d 485 (S.C. App. 1994).

2. Real Party in Interest

Plaintiff is not the real party in interest, nor does it have the right to bring the claims on behalf of the individual homeowners. Pursuant to the original CCRs, the individual homeowners have the right and obligation to maintain and repair their units including the exterior and roofs. (*See* Exhibit C, CCRs, § 5.2). On March 1, 2021, immediately before filing this lawsuit, the homeowners improperly attempted to amend the CCRs to assign the right to bring this lawsuit from the homeowners to Plaintiff. The Second Amendment added the following language:

> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof[.]

Exhibit D. The Second Amendment was filed three days before this lawsuit was filed.

Because the Second Amendment was ineffective, Plaintiff lacks standing to bring these claims, and the lawsuit should be dismissed.

3. Statute of Repose

This case involves alleged defects in the construction of the townhomes at Mansfield. Plaintiff filed suit against D.R. Horton on March 12, 2021. The Statute of Repose for alleged defective improvements to real property is 8 years after "substantial completion of the improvement." S.C. Code § 15-3-640. "A statute of repose creates a substantive right in those

protected to be free from liability after a legislatively determined period of time." Marshall v. Dodds, 426 S.C. 453, 473, 827 S.E.2d 570, 580 (2019) (citing Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). "A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." Florence Cty. Sch. Dist. # 2 v. Interkal, Inc., 348 S.C. 446, 453, 559 S.E.2d 866, 869 (Ct. App. 2002) (citing Langley v. Pierce, 313 S.C. 401, 403-404, 438 S.E.2d 242, 243 (1993)).

In cases of new construction, "a certificate of occupancy … shall constitute proof of substantial completion" unless the parties agree in writing on a different date. S.C. Code § 15-3-640. As noted by the Supreme Court of South Carolina in Lawrence v. General Panel Corp., "the statute of repose begins to run *at the latest* on the date of the certificate of occupancy[.]" 425 S.C. 398, 403, 822 S.E.2d 800, 802 (2019) (emphasis added). Plaintiff has not submitted a written agreement between the homeowners and D.R. Horton which agreed on a different date of substantial completion. Thus, because the Certificates of Occupancy for the units were issued prior to March 12, 2013, Plaintiff's claims are barred by the Statute of Repose. (*See* Exhibits A and B). Moreover, Plaintiff's claims are not saved by any of the exceptions to the Statute of Repose.

A. The Exceptions to The Statute of Repose Do Not Apply

The legislature has laid out several exceptions to the Statue of Repose defense in S.C. Code §§ 15-3-640 and 15-3-670. However, those exceptions are inapplicable, and Plaintiff's claims are barred by the Statue of Repose.

i. Fraud, Gross Negligence and Recklessness

First, pursuant to S.C. Code § 15-3-670(A), the Statute of Repose is not applicable to a defense to claims of "fraud, gross negligence, or recklessness." Moreover, "the violation of a

building code of a jurisdiction or political subdivision does not constitute per se fraud, gross negligence, or recklessness, but this type of violation may be admissible as evidence of fraud, negligence, gross negligence, or recklessness." S.C. Code § 15-3-670(B).

Under South Carolina law, "ordinary negligence, gross negligence, and reckless, willful, or wanton conduct" are all forms of actionable conduct falling along a continuum of negligence that stops short of conduct amounting to an intentional tort. Pier View Condo. Ass'n v. Johns Manville, Inc., Civil Action No. 2:18-22-BHH, 2022 U.S. Dist. LEXIS 38602, *16-17 (D.S.C. Mar. 4, 2022) (quoting Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607, 615 (2011)). "Gross negligence is defined as the 'failure to exercise slight care,' or 'the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Pier View Condo. Ass'n v. Johns Manville, Inc., Civil Action No. 2:18-0022-BHH, 2021 U.S. Dist. LEXIS 29438, at *21 (D.S.C. Feb. 17, 2021) (quoting Toney v. LaSalle Bank Nat. Ass'n, 896 F. Supp. 2d 455, 479-80 (D.S.C. 2012)). "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning – the conscious failure to exercise due care." Pier View Condo. Ass'n v. Johns Manville, Inc., Civil Action No. 2:18-0022-BHH, 2021 U.S. Dist. LEXIS 29438, at *22 (D.S.C. Feb. 17, 2021) (quoting Berberich v. Jack, 709 S.E.2d 607, 612 (S.C. 2011)). In comparison to grossly negligent conduct, "recklessness constitutes a degree of negligent culpability greater than gross negligence is reflected by the fact that punitive damages are not awardable for mere gross negligence." Pier View Condo. Ass'n v. Johns Manville, Inc., 2022 U.S. Dist. LEXIS 38602, *16-17, 2022 WL 632933 (citing Solanki v. Wal-Mart Store No. 2806, 410 S.C. 229, 763 S.E.2d 615, 619 (S.C. Ct. App. 2014)).

Plaintiff's first cause of action is entitled "Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness." While Plaintiff has attempted to plead gross negligence and recklessness in an effort to circumvent the Statute of Repose, Plaintiff has failed to present any facts that would rise beyond simple negligence. *See* Plaintiff's Complaint, ¶ 10. Moreover, as testified to by Plaintiff's expert, the alleged deficiencies are "common" and 'typical" of construction projects. (R. Mease Depo., 73:11-17, 107:16-109:1, 114:24-115:7, 131:1-3). Mr. Mease could only point to one defect as being what he referred to as a "gross dereliction of duty" – the selection of one of the siding materials. (R. Mease Depo., 39:21-40:5). One of the siding materials was unlabeled, and Mr. Mease believes that it is a product that does not belong in the wind zone. (R. Mease Depo., 39:21-40:5, 57:21-59:18, 165:6-23). However, Mr. Mease cannot prove that the unlabeled siding is that product. (Id.). Mr. Mease also testified that he does not know who selected the siding and whether D.R. Horton took any part in that decision. (Id.).

The record contains no evidence that D.R. Horton failed to exercise slight care or intentionally and consciously failed to do something which was incumbent upon D.R. Horton to do or consciously failed to exercise due care. Thus, there is no evidence in the record that D.R. Horton's alleged actions or inactions arose to the level of recklessness and gross negligence. Plaintiff has not and cannot make a *prima facie* case for these causes of action. Therefore, this exception does not apply, and D.R. Horton is entitled to summary judgment on these claims.

Plaintiff also alleged that its claims are not barred by the Statute of Repose because D.R. Horton is guilty of fraud. (*See* Plaintiff's Complaint, ¶ 6). However, in order

> To maintain a claim for fraud, a plaintiff must show by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer's ignorance of its falsity; (7) the

> hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008) (citing Hendricks v. Hicks, 374 S.C. 616, 620, 649 S.E.2d 151, 152-53 (Ct. App. 2007)). Plaintiff has failed to produce evidence of any false representation by D.R. Horton or any evidence of D.R. Horton's knowledge of its falsity or a reckless disregard for its truth or falsity. Further, there is no evidence that D.R. Horton intended Plaintiff to act upon any alleged false representation and Plaintiff's reliance on the representation.

Accordingly, Plaintiff's claims, including the claim for gross negligence and recklessness should be dismissed as they are barred by the State of Repose. In the alternative, Plaintiff is entitled to summary judgment on all of Plaintiff's other claims with only the gross negligence/recklessness claim remaining.

ii. Possession at the Time the Defective Condition Constituted the Proximate Cause of the Injuries

As provided in Section 15-3-670(A),

> [The Statute of Repose] may not be asserted as a defense by a person in *actual possession or control*, as owner, tenant, or otherwise, of the improvement *at the time the defective or unsafe condition constitutes the proximate cause* of the injury . . . for which it is proposed to bring an action, in the event the person in actual possession or control *know, or reasonably should have known of the defective of unsafe condition.*

(Emphasis added). D.R. Horton was not in possession of the units at the time the alleged defective condition constituted the proximate cause of the injuries alleged by Plaintiff. Therefore, this exception also does not apply.

iii. Concealment

The concealment exception provided in subsection (A) is inapplicable as there is no evidence D.R. Horton concealed a cause of action from Plaintiff.[3] Courts in the Fourth Circuit have held that

> The common law clearly distinguishes between concealment and nondisclosure. The former is characterized by deceptive acts or contrivances intended to hide information, mislead, avoid suspicion, or prevent further inquiry into a material matter. The latter is characterized by mere silence.

Pier View Condo. Ass'n v. Johns Manville, Inc., 2022 U.S. Dist. LEXIS 38602, *8, 2022 WL 632933 (D.S.C. March 4, 2022) (citing United States v. Colton, 231 F.3d 890, 899 (4th Cir. 2000); Robertson v. Sea Pines Real Estate Companies, Inc., 679 F.3d 278, 291 n. 2 (4th Cir. 2012)). Thus, the concealment exception requires affirmative acts to mislead or hide information that a cause of action may exist as opposed to the simple nondisclosure of defects. There is no evidence that D.R. Horton took such affirmative acts.

iii. Express Warranty

Pursuant to S.C. Code § 15-3-640, "nothing in this subsection prohibits a person from entering into a contractual agreement prior to the substantial completion of the improvement which extends any guarantee of a structure or component being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement or component." Plaintiff has not submitted a contract extending the warranty period beyond the Statute of Repose. Therefore, this exception to the Statute of Repose also does not apply.

iv. Toxic, Harmful, or Injury-Producing Substance

[3] *See* S.C. Code § 15-3-670(A) ("The limitations provided by 15-3-640 through 15-3-660 are not available as a defense … to a person who conceals any such cause of action").

The last exception in Section 15-3-670 provides that the Statute of Repose "may not be asserted as a defense to an action for … property damage which is: (1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and (2) the result of … exposure to some ***toxic or harmful or injury producing substance***, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma." S.C. Code § 15-3-670(C) (emphasis added). There is no evidence of any toxic, harmful, or injury-producing substance causing property damage. Therefore, this exception to the Statute of Repose does not apply.

Based on the foregoing, the 8-year Statute of Repose bars all of Plaintiff's claims, and D.R. Horton is entitled to summary judgment.

4. Breach of Warranty of Habitability

As outlined above, all of Plaintiff's claims are barred by the Statute of Repose. In the alternative, D.R. Horton is entitled to summary judgment on Plaintiff's breach of warranty of habitability claim. Plaintiff cannot maintain an action against D.R. Horton for breach of warranty of habitability as Plaintiff did not purchase any of the townhomes. The warranty of habitability "springs from the sale of a new house." Kirkman v. Parex, Inc., 369 S.C. 477, 483 n.2, 632 S.E.2d 854, 857 (2006). *See also* Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E2d 730 (1989); Lane v. Trenholm Bldg. Co., 267 S.C. 497, 229 S.E.2d 728 (1976); and Avari v. Shaw, 289 S.C. 161, 34 S.E.2d 715 (1986). Because Plaintiff did not purchase the townhomes, Plaintiff's claim for breach of warranty of habitability fails, and D.R. Horton is entitled to judgment as a matter of law.

5. Acceptance of Defects by New Owners

D.R. Horton has filed a Motion to Compel seeking, among other things, the South Carolina

Property Disclosure forms for each homeowner and information and documents related to any sales in Mansfield since Plaintiff's expert report. Pursuant SCRCP Rule 10(c), D.R. Horton incorporates by reference its arguments submitted in its Motion to Compel and Brief in Support of its Motion to Compel. For any townhomes that have been sold since Plaintiff's expert report, the seller of the unit should have disclosed the alleged defects and those subsequent homeowners would have purchased the homes with knowledge of the alleged defects.

6. Unfair Trade Practices Act

Plaintiff cannot make a *prima facie* case for the violation of the Unfair Trade Practices Act ("UTPA"). The UTPA declares that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commence are … unlawful." S.C. Code Ann. § 39-5-20(a). In order "[t]o recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 337, 732 S.E.2d 166, 174 (2012) (quoting Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)). "A trade practice is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is 'deceptive' when it has a tendency to deceive." Young v. Century Lincoln-Mercury, Inc., 302 S.C. 320, 326, 396 S.E.2d 105, 108 (Ct. App. 1989) (citation omitted). Moreover, "[w]hether a particular act or practice is unfair or deceptive within the meaning of the UTPA statute depends upon the facts surrounding the transaction and its impact on the market place." Id.

The majority of the alleged defects are common and typical in construction projects. (R. Mease Depo., 73:11-17, 107:16-109:1, 114:24-115:7, 131:1-3). There is no evidence that D.R.

Horton engaged in a practice that was offensive to public policy, immoral, unethical, oppressive or that had a tendency to deceive. Because Plaintiff cannot prove the elements required for a claim under the UTPA, D.R. Horton is entitled to summary judgment on that claim.

7. Breach of Fiduciary Duty

Plaintiff cannot make a *prima facie* case for breach of fiduciary duty and, therefore, D.R. Horton is entitled to summary judgment on the clam. To establish a claim for bready of fiduciary duty under South Carolina law, "the plaintiff must prove (1) *the existence of a fiduciary duty*, (2) a breach of the duty *owed to plaintiff by the defendant*, and (3) damages proximately resulting from the wrongful conduct of the defendant." RTF Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-336, 732 S.E.2d 166, 173 (2012) (emphasis added). "A fiduciary relationship exists when one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." Bennett v. Est. of King, 875 S.E.2d 46 (S.C. 2022) (citations omitted).

Plaintiff alleges that D.R. Horton owed "fiduciary and fiduciary-like duties" as a developer and seller. (Complaint, ¶ 25). South Carolina courts have imposed a fiduciary duty on developers to transfer common areas that are in good repair and to provide the property owners' association with the funds necessary to effectuate any needed repairs to the common areas. *See* Magnolia N. Prop. Owners' Ass'n v. Heritage Cmtys., Inc., 397 S.C. 348, 374, 725 S.E.2d 112, 126 (Ct. App. 2012); Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co., LLC, 425 S.C. 276, 292, 821 S.E.2d 509, 517 (Ct. App. 2018). Plaintiff's expert has not evaluated the clubhouse. (R. Mease Depo., 54:11-19). The alleged deficiencies concern the townhomes not the common areas. This fiduciary duty does not apply in the present case.

There is no evidence to support Plaintiff's allegations that D.R. Horton owed fiduciary

duties to Plaintiff and that D.R. Horton breached those alleged duties. Therefore, D.R. Horton is entitled to judgment as a matter of law on Plaintiff's breach of fiduciary duty claim.

III. CONCLUSION

Based on the foregoing, D.R. Horton is entitled to summary judgment on all of Plaintiff's claims as they are barred by the Statute of Repose. Additionally, D.R. Horton is entitled to summary judgment on Plaintiff's claims because Plaintiff lacks standing. In the alternative, D.R. Horton is entitled summary judgment on Plaintiff's claims of gross negligence/recklessness, breach of warranty of habitability, unfair trade practices, breach of fiduciary duty, and any claims for townhomes that have been sold since there was knowledge of the alleged defects.

WHEREFORE, Defendant D.R. Horton, Inc. shall, and hereby does, move the Arbitrator for an Order granting summary judgment in favor of Defendant D.R. Horton.

KENISON, DUDLEY, & CRAWFORD, LLC

s/ Jason M. Imhoff
Jason M. Imhoff, (S.C. Bar # 69355)
John T. Crawford Jr. (SC Bar #69682)
704 East McBee Avenue
Greenville, South Carolina 29601
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imhoff@conlaw.com
crawford@conlaw.com
Counsel for Defendant D.R. Horton Inc.

August 30, 2022

Mansfield Townhomes
Permit Information

Unit	Permit Number	Permit Date	CO Date	
3001	RN-09-78100	7/1/2009	11/5/2009	
3005	RN-09-78113	7/1/2009	11/5/2009	
3009	RN-09-78114	7/1/2009	11/5/2009	
3013	RN-09-78111	7/1/2009	11/5/2009	
3017	RN-09-78074	6/30/2009	12/30/2009	
3021	RN-09-78070	6/30/2009	9/7/2010	
3025	RN-09-78069	6/30/2009	8/10/2010	
3029	RN-09-78075	6/30/2009	2/25/2010	
3033	RN-09-78451	8/10/2009	3/26/2010	
3037	RN-09-78481	8/10/2009	10/14/2010	
3041	RN-09-78485	8/10/2009	6/9/2010	
3045	RN-09-78413	8/10/2009	6/9/2010	
3049	RN-09-78482	8/10/2009	3/29/2010	
3053	RN-09-78487	9/30/2010	8/10/2009	
3057	RN-10-83483	11/18/2010	5/19/2011	
3061	RN-10-83484	11/18/2010	8/25/2011	
3065	RN-10-83486	11/18/2010	8/25/2011	
3069	RN-10-83487	11/18/2010	8/26/2011	
3073	RN-10-83489	11/18/2010	9/1/2011	
3077	RN-10-83490	11/18/2010	6/8/2011	
3081	RN-10-82552	10/6/2010	4/27/2011	
3085	RN-10-82624	10/6/2010	7/14/2011	
3089	RN-10-82631	10/6/2010	6/17/2011	
3093	RN-10-82634	10/6/2010	4/27/2011	
3097	RN-10-81179	5/6/2010	10/14/2010	
3101	B-05-52081	4/12/2005	12/16/2005	Clubhouse
3105	RN-10-81177	5/6/2010	9/30/2010	

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

10/27/2010

PERMIT #	RN-10-081180
PROJECT NAME:	D R Horton
ADDRESS:	3109 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE: OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

68-0002

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

09/30/2010

PERMIT #	RN-10-081177
PROJECT NAME:	D R Horton
ADDRESS:	3105 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE: OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1639

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

10/14/2010

PERMIT #	RN-10-081179
PROJECT NAME:	D R Horton
ADDRESS:	3097 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE: OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

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BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

04/27/2011

PERMIT #	**RN-10-082634**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3093 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC & IECC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-2 Residential, multiple family**
SQUARE FOOTAGE:	**2242**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 000919

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

06/17/2011

PERMIT #	**RN-10-082631**
PROJECT NAME:	D R Horton
ADDRESS:	3089 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE:	
OCCUPANCY TYPE:	R-2 Residential, multiple family
SQUARE FOOTAGE:	2242

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 000978

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

07/14/2011

PERMIT #	**RN-10-082624**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3085 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC & IECC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-2 Residential, multiple family**
SQUARE FOOTAGE:	**2242**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001058

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

04/27/2011

PERMIT #	**RN-10-082552**
PROJECT NAME:	D R Horton
ADDRESS:	3081 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Town Home 2006 IRC & IECC
PROPOSED USE:	
OCCUPANCY TYPE:	R-2 Residential, multiple family
SQUARE FOOTAGE:	2242

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001114

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

06/08/2011

PERMIT #	**RN-10-083490**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3077 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC 29466**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC & IECC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-3 and IRC Residential, one and two family**
SQUARE FOOTAGE:	**1894**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001173

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

C E R T I F I C A T E O F O C C U P A N C Y

09/01/2011

PERMIT #	**RN-10-083489**
PROJECT NAME:	D R Horton
ADDRESS:	3073 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29466
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC & IECC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1894

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001227

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

09/30/2010

PERMIT #	RN-09-078487
PROJECT NAME:	D R Horton
ADDRESS:	3053 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE: OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

03/29/2010

PERMIT #	**RN-09-078482**
PROJECT NAME:	D R Horton
ADDRESS:	3049 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-2 Residential, multiple family
SQUARE FOOTAGE:	1863

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

06/09/2010

PERMIT #	**RN-09-078413**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3045 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC 29464**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC**
PROPOSED USE: **OCCUPANCY TYPE:**	**R-3 and IRC Residential, one and two family**
SQUARE FOOTAGE:	**1863**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

06/09/2010

PERMIT #	**RN-09-078485**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3041 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC**
PROPOSED USE: **OCCUPANCY TYPE:**	**R-2 Residential, multiple family**
SQUARE FOOTAGE:	**1863**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

10/14/2010

PERMIT #	**RN-09-078481**
PROJECT NAME:	D R Horton
ADDRESS:	3037 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE: OCCUPANCY TYPE:	R-2 Residential, multiple family
SQUARE FOOTAGE:	1863

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

68-0020

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

03/26/2010

PERMIT #	**RN-09-078451**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3033 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-2 Residential, multiple family**
SQUARE FOOTAGE:	**1912**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

02/25/2010

PERMIT #	**RN-09-078075**
PROJECT NAME:	D R Horton
ADDRESS:	3029 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

08/10/2010

PERMIT #	RN-09-078069
PROJECT NAME:	D R Horton
ADDRESS:	3025 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE: / OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1402

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

09/07/2010

PERMIT #	**RN-09-078070**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3021 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC 29464**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhome 2006 IRC**
PROPOSED USE:	
OCCUPANCY TYPE:	**R-3 and IRC Residential, one and two family**
SQUARE FOOTAGE:	**1402**

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

12/30/2009

PERMIT #	RN-09-078074
PROJECT NAME:	D R Horton
ADDRESS:	3017 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 001958

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

11/05/2009

PERMIT #	**RN-09-078111**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3013 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC 29464**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhouse 2006 IRC**
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

11/05/2009

PERMIT #	**RN-09-078114**
PROJECT NAME:	D R Horton
ADDRESS:	3009 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc.
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhouse 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1402

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 002082

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

11/05/2009

PERMIT #	**RN-09-078113**
PROJECT NAME:	**D R Horton**
ADDRESS:	**3005 Park West Blvd**
CITY, ST ZIP:	**Mt Pleasant, SC 29464**
Contractor's Name	**D R Horton Inc.**
	503 Wando Park Blvd Ste 200
	Mt Pleasant SC 29464
CONSTRUCTION TYPE:	**New Townhouse 2006 IRC**
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1402

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

DRH 002151

Mansfield

TOWN OF MOUNT PLEASANT
BUILDING INSPECTIONS DIVISION

CERTIFICATE OF OCCUPANCY

11/05/2009

PERMIT #	**RN-09-078100**
PROJECT NAME:	D R Horton
ADDRESS:	3001 Park West Blvd
CITY, ST ZIP:	Mt Pleasant, SC 29464
Contractor's Name	D R Horton Inc. 503 Wando Park Blvd Ste 200 Mt Pleasant SC 29464
CONSTRUCTION TYPE:	New Townhome 2006 IRC
PROPOSED USE:	
OCCUPANCY TYPE:	R-3 and IRC Residential, one and two family
SQUARE FOOTAGE:	1912

SPECIAL PROVISIONS:

This certificate is issued upon completion of inspections for compliance with the Town of Mount Pleasant Code of Ordinances. The building may only be occupied in accordance with the classification listed above.

BUILDING OFFICIAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BK P 638PG409

THIS DECLARATION CONTAINS AN ARBITRATION AGREEMENT SUBJECT TO THE SOUTH CAROLINA ARBITRATION ACT, SECTION 15-48-10, et. seq., CODE OF LAWS OF SOUTH CAROLINA, 1999

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

Upon recording, please return to:

Willcox, Buyck & Williams, P.A.
1991 Glenns Bay Road
Surfside Beach, SC 29575

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BK P 638PG413

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MANSFIELD AT PARK WEST

This Declaration of Covenants, Conditions and Restrictions is made this 10th day of September, 2007, by **D.R. HORTON, INC.**, a Delaware corporation with an address of 503 Wando Park Blvd., Suite 200, Mt. Pleasant, SC 29464 (hereinafter the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference; and,

WHEREAS, the Property has been previously submitted to certain imposed mutually beneficial covenants, conditions, restrictions and easements under a general plan of improvement for the benefit of all owners of residential property within a residential community known as "Park West" pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Park West Master Association dated December 17, 1997 and recorded on December 17, 1997 in Book P294 at Page 275, et seq., including all amendments thereto, records of Charleston County (hereinafter "The Master Declaration"); and,

WHEREAS, the real property described in the attached Exhibit "A" is a portion of that real property subjected to The Master Declaration; and,

WHEREAS, pursuant to Paragraph 1.1.15, Declarant herein is defined as a "Developer" pursuant to The Master Declaration, and is holding the Property for purpose of development into Units; and

WHEREAS, pursuant to Paragraphs 1.1.26, 1.1.27 and 2.4..4 a Developer may submit its Property within Park West to additional restrictions by creating a Subordinate Association and filing a Subordinate Declaration; and

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the property known as Mansfield at Park West and the interrelationships of the component residential associations, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such property as is now or may hereafter be submitted to this Declaration. The Association hereby created may perform educational, recreational, charitable and other social welfare activities

NOW, THEREFORE, Declarant, D.R. Horton, Inc., hereby declares as follows:

ARTICLE I
Creation of the Community

1.1 Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A" and as Developer under the Master Declaration, hereby declares that the real property described in Exhibit "A" and any additional property as may by subsequent amendment be added to and subjected to this Declaration, shall be held, sold and conveyed subject to The Master Declaration and the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the property comprising Mansfield at Park West. An integral part of the development plan is the creation of a townhome neighborhood known as Mansfield at Park West, Inc. (the "Townhome Association"), an association comprised of all Owners of real property in Mansfield at Park West, to own, operate or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

1.2 Binding Effect.

The property described in Exhibit "A" and any additional property which is made a part of Mansfield at Park West shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title or interest in any portion of Mansfield at Park West, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of each owner thereof. The provisions set forth in this Declaration shall be applicable only to Owners of any Units as defined herein in Article II Section 2.5.

This document does not and is not intended to create a condominium within the meaning of the South Carolina Horizontal Property Regime Act.

This Declaration, as it may be amended and supplemented from time to time, shall remain in effect and shall be enforceable by the Declarant, the Townhome Association, any Owner, and their respective legal representatives, heirs, successors and assigns for a term of Twenty (20) years from the date this Declaration is Recorded. After such time, this Declarations shall be extended automatically for successive periods of Ten (10) years each, unless an instrument signed by a majority of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration in which case it shall terminate as of the date specified in such instrument. Nothing in this section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3 Governing Documents.

The Governing Documents create a general plan of development for Mansfield at Park West. The Governing Documents include The Master Declaration and this Declaration which shall be in addition to the covenants, conditions, restrictions and easements set forth in the Master Declaration. To the extent that this Declaration conflicts with The Master Declaration the latter shall control except to the extent the former establishes a higher or stricter standard or requirement for Mansfield at Park West.

No Person shall record additional covenants, conditions, or restrictions affecting any portion of Mansfield at Park West without Declarant's written consent, so long as Declarant owns any portion of the real property described in Exhibit "A" or "B". Thereafter, Owners representing at least Seventy-five (75%) percent of the Townhome Association's total votes must consent to such additions. Any instrument Recorded without the required consent is void and of no force and effect.

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

ARTICLE II
Definitions

2.1. **"Area of Common Responsibility"** shall mean and refer to the Common Area, together with those areas, if any, which by contract with any residential or condominium association with any commercial establishment or association, or with any apartment building owner or cooperative within Townhomes, become the responsibility of the Townhome Association.

2.2 **"Assessment"**: shall include without limitation, general, special, specific or Neighborhood assessment.

2.3 The **"Board of Directors** or **"Board"**: The body responsible for administering the Townhome Association, selected as provided in the By-Laws, a copy of which is attached hereto as Exhibit "C" and serving the same role as the board of directors under South Carolina corporate law.

2.4 **"Common Area"** or **"Common Properties"**: All real and personal property now or hereafter owned by the Townhome Association for the common use and enjoyment of the Owners.

2.5 **"Common Expenses"**: The actual and estimated expenses of operating the Townhome Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Articles of Incorporation.

2.6 **"Community":** The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with this Declaration and commonly known as Mansfield at Park West.

2.7 **"Declarant"**: D.R. Horton, Inc., a Delaware Corporation, or any successor or assign which is designated as Declarant in a Recorded Instrument executed by the immediately preceding Declarant.

2.8 **"FNMA, Freddie MAC, VA & FHA"** shall mean and refer to the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and

Federal Housing Authority, respectively.

2.9 **"Master Association"**: Park West Master Association, Inc.

2.10 **"Member"**: A person or entity entitled to membership in the Townhome Association, as provided herein.

2.11 **"Neighborhood"**: Separately designed, developed residential areas comprised or various types of housing initially or by amendment made subject to this Declaration, for example and as by way of illustration and not limitation: patio home development, condominiums, or fee simple townhouses. In the absence of a specific designation of separate parcel status, all property made subject to this Declaration shall be considered a part of the same parcel; provided, however, the Declarant may designate in any subsequent amendment adding property to the terms and conditions of this Declaration that such property shall constitute a separate parcel or parcels.

2.12 **"Neighborhood Assessments"**. Neighborhood Assessments for common expenses for herein or by any supplementary Declaration shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the owners of the Units against which the specific parcel assessment is levied and of maintaining the property within a given Neighborhood, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below.

The Neighborhood Assessment shall be levied equally against owners of Units in a Neighborhood for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

2.13 **"Owner"**: The record owner, whether one or more persons or entities, of any Townhome Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Townhome Unit is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser, (rather than the fee owner) shall be considered the Owner for purposes of this Declaration.

2.14 **"Person"**: A natural person, a corporation, a partnership, trustee, or other legal entity.

2.15 **"Properties" or "Property"**: The real property described in Exhibit "A" attached hereto and shall further refer to such additional property as may hereafter be annexed by amendment to this Declaration or which is owned in fee simple by the Townhome Association.

2.16 **"Townhome Association" or "Association"**: Mansfield at Park West, Inc., a South Carolina nonprofit corporation, its successors and assigns.

2.17 **"Unit"**: For purposes of this Declaration, "Unit" shall mean and refer to "Townhome Units". Townhome Units are Units as defined in The Master Declaration. Moreover, a Townhome Unit consists of any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction or improvements, a single dwelling site for a Townhome that will be attached by one or more party

walls to another Townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units that are appurtenant to and serve each Townhome Unit (including, but not limited to, compressors, conduits, wires and pipes) and any driveway, porch, deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Townhome Unit when such Townhome Unit is initially constructed.

For the purpose of Article X of this Declaration, a newly constructed Unit shall come into existence and shall be liable for assessements upon the issuance of a certificate of occupancy by the appropriate agency of Charleston County, the City of Mount Pleasant or any other appropriate governmental or quasi-governmental entity.

ARTICLE III
Property Rights

3.1 Members' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area subject to any restrictions or limitations contained in any deed or amendment to this Declaration conveying to the Townhnome Association or subjecting to this Declaration such property. Any owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and invitees subject to reasonable regulation and in accordance with procedures the Townhome Association may adopt.

3.2 Title to Common Properties. Declarant shall convey legal title to the Common Properties to the Townhome Association prior to the end of the Declarant Control Period, or to the Master Association, as appropriate, in accordance with the provisions of Section 2.2.3 of the Master Declaration. Further, Declarant shall remove all liens and encnmbrances on the Common Properties, except those created by or pursuant to the Declaration, subject, however, to the following covenants, which shall be deemed to run with any land conveyed to the Townhome Association and shall be binding upon the appropriate Association, its successors and assigns:

> In order to preserve and enhance the property values and amenities of the community, the Common Properties and all facilities now or hereafter built or installed thereon, shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Properties shall include, but not be limited to, the repair of damage to pavement, walkways, outdoor lighting, and entrance. Further, it shall be an express affirmative obligation of the Association to keep all of the Common Properties conveyed to it and facilities appurtenant thereto, open, adequately staffed and operating during those months and during such hours as such property would normally be in operation in this locality.

This Section shall not be amended, except as provided for in Article XVIII, to reduce or eliminate the obligation for maintenance and repair of the Common Properties.

3.3 Additions to Common Properties. In the event Declarant exercises the option set forth in Article VIII of this Declaration to bring additional properties within the scheme of this Declaration, it shall also have the right but not the obligation to construct additional recreational facilities and convey such land and facilities to the Townhomes Association or Master Association as Declarant deems appropriate.

3.4 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Townhome Association and/or Master Association, as provided in its By-Laws to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulation;

(b) The right of the Townhome Association and/or Master Association to charge reasonable admission and other fees for the use of the Common Properties;

(c) The right of the Townhome Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no dedication or transfer, determination as to the purpose or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast seventy-five (75%) percent of the eligible votes has been recorded, agreeing to such dedication, transfer, purpose or condition and unless written notice of the action is sent to every Member at least Thirty (30) days in advance of any action taken;

(d) The right of the Declarant and of the Townhome Association to grant and reserve easements and rights-of-way, in, through, under, over and across the Common Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, and other utilities, and the right of the Declarant to grant and serve easements and rights-of-way, in, through, under, over, upon and across the Common Properties for the completion of the Declarant's work.

ARTICLE IV
Membership and Voting Rights

4.1 Membership. Every person or entity who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall be determined to have a membership in the Townhome Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No Owner, whether one or more persons, shall have more than one membership per Unit owned. In the event of multiple owners of a Unit, votes and rights of use

and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote for each class of membership applicable to a particular Unit be cast for each Unit.

4.2 **Voting**. The Townhome Association shall have two (2) classes of membership, Class "I" and Class "II" as follows:

(a) Class "I". Class "I" members shall be all Owners with the exception of the Class "II" members, if any.

Class "I" members shall be entitled on all issues to one (1) vote for each Unit in which they hold the interest required for membership by Section 1 hereof; there shall be only one (1) vote per Unit. When more than one person holds such interest in any Unit, the vote for such Unit shall be exercised as those owners themselves determine and advise the Secretary of the Townhome Association prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one person seeks to exercise it.

(b) Class "II". The sole Class II Member shall be the Declarant, its successor or assign. At the time Declarant records a subdivision plat of the Townhomes in the records of Charleston County, South Carolina, for any of the real property described in Exhibit "A" or "B", or made subject to this Declaration as provided herein, Declarant shall have voting rights under this section of all Units shown on such Plat(s). As to all matters with respect to which Members are given the right to vote under the Governing Documents, the Declarant shall be entitled to ten (10) votes per Unit owned and in addition, shall be entitled to appoint all of the members of the Board until termination of the Class II Membership. The Class II Membership shall cease to exist and shall be converted to Class I Membership only upon the earlier of the following:

(1) One Hundred Twenty (120) days after the conveyance by Declarant of all of ninety (90%) percent of the Units within the real property described in Exhibit "A" or "B" or made subject to this Declaration pursuant to Section 10.1 hereof; or

(2) A date selected by Declarant as evidenced by a recorded instrument, but not later than ten (10) years after the recording of this Declaration.

ARTICLE V
Maintenance

5.1. **Townhome Association's Responsibility.** The Townhome Association shall maintain and keep in good repair the Common Area not conveyed to the Master Association. The Townhome Association shall also maintain and keep in good repair the exterior of the Units, including but not limited to the landscaping around the Units which shall include the back yard of a Unit unless the back yard of such Unit has been enclosed by a fence which was approved by the Townhome and/or Master Association, and such maintenance to be funded, as hereinafter provided; provided, however, any sidewalk which may be a part of the Common Area, if not dedicated to public maintenance, shall be maintained by the Townhome Association. This

maintenance shall include the following:

(a) periodic treatment of all exterior walls and foundations of the Units for termites; provided the Townhome Association shall not be liable if such treatment proves to be ineffective; and

(b) maintaining all of the landscaping and other flora around each Unit in a manner and upon terms and conditions as determined by the Townhome Association, which maintenance shall include mowing lawns, pruning shrubbery, weed control removal and replacement of dead trees and shrubs and irrigation; and,

(c) maintenance, repair, and replacement as necessary, including pressure washing, any sidewalks and driveways, including paved portions of the Units adjacent to the garage of any Unit if such driveway or paved portion is shared by two or more Units; and,

(d) maintenance, repair, and replacement as necessary of any irrigation equipment, including, but not limited to sprinklers, wells, pumps water lines and time clocks wherever located, serving the front yard of each Unit, except that the Townhome Association shall have no responsibility for any of the aforementioned which is installed or altered by any Owner or Occupant of a Unit or his or her guest, agent, employee or contractor; and,

(e) maintenance, repair, and replacement as necessary perimeter landscaping or walls within the perimeter easement are, if such perimeter walls or landscaping are initially installed by the Declarant or the Townhome Associations; and,

(f) maintenance, repair, and replacement as necessary of any and all structures and improvements situated upon the Common Area owned by the Townhome Association.

All costs and expenses related to the Townhome Association's maintenance responsibility hereunder shall be part of the General Assessment; provided however that any cost or expense incurred by the Townhome Association as a result of the negligence or misconduct of any Owner or Occupant of a Unit or his or her guest, agent, employee or contractor shall be assessed as a Specific assessment against the Owner of such Unit.

5.2. **Owner's Responsibility.** Each Owner shall maintain his or her Unit and all structures, parking areas, backyards and other improvements comprising the Unit in a manner consistent with the standards of Mansfield at Park West and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. Each Owner's maintenance responsibility shall include, but shall not be necessarily limited to, the following:

(a) maintenance, repair, and replacement as necessary all pipes, lines, wires, conduits or other apparatus which serve only the Unit located wholly within the Unit boundaries, including all utility lines serving on the Unit; and

(b) maintenance, repair, and replacement as necessary of the exterior surfaces of the Units, including window, and window frames, doors, and door frames, including garage doors, and any shutters, eaves, fascia, gutters and down spouts on the exterior of the Units; and

(c) maintenance, repair, and replacement as necessary of the foundation and structure of the Unit; and

(d) maintenance, repair, and replacement as necessary, including pressure washing of driveways, unless the driveway is shared by more than one Unit; and,

(e) maintenance, repair and replacement as necessary of the roof including shingle and roof decking of the Unit.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Townhome Association may perform such maintenance responsibilities and assess all costs incurred by the Townhome Association against the Unit and the Owner as a Specific Assessment in accordance with Article X. The Townhome Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Notwithstanding anything to the contrary contained herein, the Townhome Association, and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been grossly negligent in the performance of its maintenance responsibilities.

ARTICLE VI
Insurance and Casualty Losses

6.1. Insurance. The Townhome Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area not herein conveyed to the Master Association against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Common Area, the Townhome Association, and its members for all damage or injury caused by the negligence of the Townhome Association or any of its members or agents, and, if reasonably available, directors' and officer's liability insurance. The public liability policy shall have minimum limits in the amounts that the Board deems reasonable. Premiums for all insurance on the Common Area shall be common expenses of the Townhome

Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Cost of insurance coverage obtained for the Common Area shall be included in the General Assessment, as defined in Article X. hereof.

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

(a) All policies shall be written with a company licensed to do business in South Carolina holding a rating of AA or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Unit Owners and their mortgagees as their interest may appear.

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

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

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

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

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

(iii) That no policy may be cancelled, invalidated or suspended on account of any one or more individual owners;

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

(v) That any "other insurance" clause in any policy exclude individual owners' policies from consideration.

6.2. **No Partition.** Except as is permitted in the Declaration, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 4 of this Article in the case of damage or destruction, or unless the Properties have been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

6.3 **Disbursement of Proceeds.** Proceeds of insurance policies shall be disbursed as follows:

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

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 3(a) hereof.

6.4 **Damage and Destruction.**

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

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Townhome Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Townhome Association within said period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not

exceed and additional sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event any damage or destruction to the Common Area includes damage or destruction to any exterior portion or roof of a Unit, the amount of the insurance proceeds paid as a result of such damage or destruction shall be used to repair or reconstruct such Common Area. If the insurance proceeds are not sufficient to pay for such repair or reconstruction, the Townhome Association shall pay all amounts necessary to repair or reconstruct said Common Area.

(d) In the event that it should be determined by the Townhome Association pursuant to subparagraph (b) above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Townhome in a neat and attractive condition and any insurance proceeds paid as a result of such damage or destruction shall be paid to the Townhome Association.

6.5 Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Townhome Association's members, levy a special assessment against all owners in proportion to the number of Units owned by such owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Townhome Association.

6.6 Owner's Required Coverage. Each Owner shall be responsible for obtaining and maintaining at all times insurance covering all portions of his or her Unit including contents. In addition, to the extent not insured by policies of the Townhome Association or the extent insurable losses result in the payment of deductibles under the Townhome Association's policies, every Owner shall obtain and maintain at all times insurance covering consequential damages to any other Unit or the Common Area due to occurrences originating with the Owner's Unit and caused by the Owner's negligence, the Owner's failure to maintain the Unit or any other casualty within the Unit, which caused damage to any other Unit or the Common Area.

In the event of damage or destruction to a Unit, the Owner shall have sixty (60) days to complete any necessary repairs or reconstruction. Such repair or reconstruction shall conform to the architectural requirements set forth in this Declaration. In the event that an Owner does not complete the necessary repairs or reconstruction, the Townhome Association shall have the right, but not the obligation, to enter upon the Unit without further notice and complete the necessary repairs or reconstruction to bring the Unit into compliance with the Community Standard. All amounts expended by the Towhnome Association to complete the repairs or reconstruction shall be assessed as a Specific Assessment against the Unit and the Owner in accordance with Article X. The Townhome Association shall not be held liable for any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents or any injury, damages, or loss arising out of the manner or quality of the

repairs or reconstruction to any Unit undertaken by the Towhnome Association due to the failure of an Owner to comply with the requirements of this paragraph unless and only to the extent that it has been grossly negligent in the performance of such repairs or reconstruction.

At the Board's request, Owners shall file a copy of each individual policy or policies covering his or her Unit and personal property with the Board within ten (10) days after receiving such request. Such Owner shall promptly notify the Board in writing in the event such policy is canceled.

ARTICLE VII
Condemnation

Whenever all or any part of the Common Area not conveyed to the Townhome Association shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Units subject to the taking, if any) by any authority having the power of condemnation or eminent domain, each owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Townhome Association, as Trustee for all owners, to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been have been constructed, then, unless within sixty (60) days after taking the Declarant and at least seventy-five (75%) percent of the Class "I" members of the Towhnome Association shall otherwise agree, the Townhome Association shall restore or replace such improvements so taken on the remaining land included in the Common Area, to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Townhome Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Townhome Association and used for such purposes as the Board of Directors of the Townhome Association shall determine.

ARTICLE VIII
Annexation of Additional Property

8.1 **Annexation Without Approval of Class "I" Membership.** As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option, but not the obligation, from time to time at any time until twenty (20) years from the date this Declaration is recorded in the office of the Register of Mesne Conveyances for Charleston County to subject to the provisions of the Declaration and the jurisdiction of the Townhome Association all or any portion of the real property described in Exhibit "B" attached hereto and by reference made a part thereof, whether in fee simple or leasehold, by filing in the Charleston County, South Carolina records, an amendment annexing such property. Such

amendment to this Declaration shall not require the vote of members. Any such annexation shall be effective upon the filing for record of such amendment, unless otherwise provided therein.

Declarant shall have the unilateral right to transfer to any other person the said right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property described in said Exhibit "B" attached hereto.

The Declarant, its successors and assigns, shall have the right but not the obligation to bring the proposed additional development within the scheme of this Declaration unless such future developments intend to use the recreational facilities, roads, parking areas, sidewalks and tie into and connect with the sewer, water and drainage lines in the existing Properties.

Such supplementary Declaration may contain such complimentary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the added Property as are not inconsistent with the scheme of this Declaration. In no event, however, shall such supplementary Declaration revoke, modify or add to the Covenants, Restrictions, Easements, Charges and Lien establishing this Declaration within the Properties.

8.2 **Annexation With Approval of Class "I" Membership.** Subject to the written consent of the owner thereof, upon the written consent or affirmative vote of a majority of the Class "I" members other than Declarant of the Townhome Association present or represented by proxy at a meeting duly called for such purpose, the Townhome Association may annex real property other than that shown on Exhibit "B", and following the expiration of the right in Section 1, the property shown on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Townhome Association by filing of record in the office of the Register of Mesne Conveyances for Charleston County, South Carolina, a supplementary amendment in respect to the property being annexed. Any such supplementary amendment shall be signed by the President and the Secretary of the Townhome Association, and any such annexation shall be effective upon filing, unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Class "I" members of the Townhome Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Townhome Association for regular or special meetings, as the case may be.

ARTICLE IX
Rights and Obligations of the Townhome Association

9.1 **The Common Area.** The Townhome Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

9.2 **Personal Property and Real Property for Common Use.** The Townhome

Association, through action of its Board of Directors, may acquire, hold and dispose of any Common Properties, whether tangible or intangible personal property or real property. The Board, acting on behalf of the Townhome Association, shall accept any real or personal property, leasehold, or other property interests within Townhomes conveyed to it by the Declarant.

9.3. **Rules and Regulations.** The Townhome Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the owner's Unit or Units and suspension of the right to vote and the right to use the Common Area. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. Imposition of Sanctions shall be as provided in the By-Laws.

9.4 **Implied Rights.** The Towhnome Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE X
Assessments

10.1 **Creation of General Assessment.** There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. General Assessments shall be allocated equally among all Units within the Townhome Association and shall be for expenses determined by the Board to be for the benefit of the Townhome Association as a whole. Each owner, by acceptance of his or her deed, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest at the highest rate allowable under the laws of South Carolina from time to time relating to usury for commercial real estate loans, costs, and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made.

Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual assessment for delinquents; unless the Board otherwise provides, the assessments shall be paid in monthly installments. It is the intention of this Declaration that assessments for the Townhome Association and the Master Association be collected by each association individually and that the creation of Townhome Association assessments shall in no way alleviate or reduce the amount of assessments which may be due under The Master Declaration. Such a system shall prejudice neither the right for direct collection nor the lien rights set out in Section 4 of this Article. Provided however, that

pursuant to Section 6.9 of the Master Declaration, the Master Association may elect to bill the Townhome Association for any assessments due from the Owners thereby obligating the Townhome Association to collect any amounts due directly from the Owners.

10.2 Computation of Assessment. The Board shall prepare an annual budget, and the following provisions shall apply:

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Townhome Association during the coming year. The budget shall include a capital contribution establishing a reserve fund, in accordance with a capital budget separately prepared, and shall separately list general and parcel expenses, if any. The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Unit for the following year, to be delivered to each owner at least fifteen (15) days prior to said budget's effective date. The budget and the assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board disapproves the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

10.3 Working Capital. The Townhome Association shall collect from each purchaser of a Unit at the time of purchase a working capital assessment in an amount equal to Two Hundred Fifty and no/100 ($250.00) Dollars. The funds shall be used for such legal purposes as the Board of Directors may determine. Said working capital contribution shall be collected on all initial and all re-sales of Units.

10.4 Special Assessments. In addition to the assessments authorized in Section 1, the Townhome Association may levy a Special Assessment in any year. So long as the total special assessments authorized under this Article do not exceed Five Hundred and NO/100's ($500.00) Dollars in any one year, the Board, by majority vote, may impose the special assessment. If such total be exceeded, any special assessment shall be effective only with the approval of a majority of the Class "I" members.

10.5. Specific Assessments. The Townhome Association acting by and through its Board shall have the power to levy Specific Assessments against a particular Unit as follows:

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

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the

Bylaws, before levying any Specific Assessment under this subsection (b).

10.6 Lien for Assessments. Such assessment shall constitute a lien on each Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust) made in good faith and for value.

The Townhome Association, acting on behalf of the owners, shall have the power to bid for the Unit at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Townhome Association following foreclosure; (1) no right to vote shall be exercised on its behalf; (2) no assessment shall be assessed or levied on it; and (3) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Townhome Association as a result of foreclosure.

Suit to recover a money judgment for unpaid common expenses, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

10.7 Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Townhome Association, as shown on the capital budget, with respect both to amount and timing to annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment, as provided in Section 2 of this Article.

10.8 Collection of Assessments and Default. The Board may take prompt action to collect any assessment for common expenses due from any owner which remains unpaid for more than ten (10) days from the due date. Any regular, specific or special assessment levied which is not paid by the first (1st) day of each month, shall be in default. The assessment together with interest thereon at the rate of ten (10%) percent per annum and the costs of collection, including reasonable attorney fees, thereof, shall be a continuing lien upon the Unit belonging to the Owner against whom such assessment is levied. The Owner obligated to pay this delinquent assessment, may, by resolution of the Board of Directors, be subject to such penalty or "late charge" as the Board of Directors may fix prior to the fiscal period in which non-payment occurs. The Towhome Association may bring an action at law against the owner personally obligated to pay the same or foreclose and/or enforce the lien against the Unit then belonging to said owner in the manner now or hereinafter provided for the foreclosure of mortgages or other liens on real property in the State of South Carolina, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, in either of which events interest, costs and reasonable attorney's fees shall be added to the amount of cash assessment.

10.9. Statement of Account. Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Townhome Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting Person personally or by fax or by email. The Townhome Association may require the payment of a reasonable processing fee for issuance of such statement.

Such statement shall bind the Townhome Association in favor of Persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquired its interest after requesting such statement.

10.10. Budget Deficits During Declarant Control.

During the Declarant Control Period, Declarant may (but shall not be required to):

(a) Advance funds to the Association sufficient to satisfy the deficit, if any, between the Association's actual operating expenses and the sum of the Base, Special, Neighborhood, and Specific Assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of Declarant. Declarant's failure to obtain a promissory note shall not invalidate the debt;

(b) Cause the Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan; or

(c) Acquire property for, or provide services to, the Association or the Area of Common Responsibility. Declarant shall designate the value of the property or the services provided, and such amounts, at Declarant's request, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

ARTICLE XI
Architectural Standards and Control

No building, fence, wall or other structure, or change or alteration to the exterior of the Units, or in landscaping shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to

surrounding structures and topography by the Board of Directors of the Townhome Association, or by an Architectural Committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The provisions of this paragraph shall not apply to Declarant. Further, the provisions of this paragraph shall be in addition to and not in place of any and all restrictions and/or requirements for approval as set forth in The Master Declaration.

The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that Units are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners; (d) that views from any other Units or the Area of Common Responsibility are protected; or (e) that no defects exist in approved construction.

Declarant, the Townhome Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

ARTICLE XII
Use Restrictions

12.1. Framework for Regulation. The Governing Documents, including the initial Rules and Regulations which are set forth in the attached Exhibit "C", establish as part of the general plan of development for the Townhomes a framework of affirmative and negative covenants, easements, and restrictions to govern the Townhomes. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology which inevitably will affect the Townhomes, its Owners, and residents. Toward that end, this Article establishes procedures for modifying and expanding the initial Rules and Regulations set forth in Exhibit "C."

12.2. Regulation Making Authority.

(a) Board Authority. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Towhnome Association and its Members, the Board may adopt, repeal, and modify regulations governing matters of conduct and aesthetics and the activities of Members, residents, and guests within the Community, as defined by the Rules and Regulations set forth in Exhibit "C". The Board shall send notice by mail to all Members concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to

be heard at a Board meeting prior to such action being taken.

(b) Declarant's Authority. Notwithstanding the above provision, during the Declarant Control Period, the Declarant shall have the unilateral right to repeal, limit, modify or expand any of the initial Rules and Regulations set forth in Exhibit "C" without prior notice to the Board or to Members. However, any such amendment shall not materially adversely affect the substantive rights of any Owners, nor shall it adversely affect title to any Unit without the consent of the affected Owner(s).

(c) Members' Authority. Alternatively, Members representing more than fifty percent (50%) of the total votes in the Townhome Association, at a Townhome Association meeting duly called for such purpose, may vote to adopt regulations which modify, cancel, limit, create exceptions to, or expand the Rules and Regulations then in effect. Notwithstanding anything contained herein to the contrary, during the Declarant Control Period, any such action by the Members shall not be valid unless and until Declarant provides its written approval which approval or denial shall be granted in Declarant's sole and exclusive discretion.

(d) Notice; Opportunity To Disapprove. Notice of any Board resolution or Member action adopting, repealing, or modifying regulations shall be sent to all Members at least thirty (30) days prior to the effective date. Subject to Declarant's disapproval rights under the Bylaws, the resolution or Member action shall become effective on the date specified in the notice unless (i) Members petition for a special meeting, in accordance with the Bylaws, to reconsider such resolution, and (ii) the resolution is disapproved at the meeting by Members representing more than fifty percent (50%) of the total votes in the Townhome Association.

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

(f) Common Area Administrative Rules. The procedures required under this Section shall not apply to the enactment and enforcement of Board resolutions or administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment and act in accordance with the business judgment rule, as described in the Bylaws, in the enactment, amendment, and enforcement of such administrative rules and regulations.

12.3 Limitations on Rules and Regulations. Except as may be contained in this Declaration either initially or by amendment, all Rules and Regulations shall comply with the following provisions:

(a) Signs and Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt

time, place, and manner restrictions with respect to displays visible from outside the dwelling. No Owner may post or display any sign, billboard, banner or item of similar nature so as to be visible outside of any dwelling without the prior written approval of the Architectural Review Committee, including but not limited to a "for sale," "for rent," or "garage sale" sign. No rules shall regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs (including design criteria) and limit to a reasonable number the number of signs that may be posted. No sign shall be larger than 18" x 24" and any Owner posting an approved sign shall be responsible for removing such sign in a timely manner and shall be subject to enforcement actions for failing to do so. Notwithstanding anything contained herein to the contrary, the Townhome Association shall have the right, but not the obligation, to exercise self-help and to enter onto a Unit (but not the interior of a Unit) in a non-emergency situation, without notice and opportunity for hearing prior thereto for the purpose of removing any sign, billboard, banner or other item of similar nature posted or displayed in violation of this provision.

(b) Household Composition. No rule established pursuant to this Article shall interfere with the Owners' freedom to determine the composition of their households.

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

(d) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Townhome Association. Nothing in this provision shall prevent the Townhome Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the Governing Documents.

(e) Alienation. No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Unit or require consent of the Townhome Association or Board for leasing or transfer of any Unit; however, the Townhome Association or the Board may require a minimum lease term of up to twelve (12) months.

(f) Reasonable Rights To Develop. No rule or action by the Townhome Association shall unreasonably impede Declarant's right to develop the Community in accordauce with the rights reserved to Declarant in this Declaration.

12.4 Owners' Acknowledgment and Notice to Purchasers.

All Owners and prospective purchasers are given notice that use of their Units and the Common Area is limited by the Rules and Regulations, as they may be amended, limited, repealed, expanded, or otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision, that the Rules and Regulations may change from time to time, and that the current Rules

and Regulations may not be set forth in a Recorded instrument. All purchasers of Units are on notice that the Townhome Association may have adopted changes to the Rules and Regulations. The Townhome Association shall provide a copy of the current Rules and Regulations to any Member or Mortgagee upon request and payment of the reasonable cost of such copy.

ARTICLE XIII
Easements

13.1 Easements for Utilities, Etc. Easements for ingress and egress and for the installation, use, maintenance, repair, and replacement of public and/or private utilities including but not limited to sewer, gas, electricity, telephone, TV cable, telecommunications, or water lines for the use of the Units hereinbefore described are hereby created over, under and across the property described on Exhibit "A" as set forth on any plat recorded by Declarant.

There is hereby reserved to Declarant, its successors and assignees, the power to grant reasonable easements upon, across, over and under all of the property for ingress, egress, installation, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewer, telephones, telecommunications and electricity. The Declarant shall, upon written request, grant such easements as may be reasonable necessary for the development of any property reserved by it or annexed as herein provided.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonable interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall by made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier and electric provider easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

Declarant specifically grants to the Townhome Association easements across the properties for ingress and egress for the purpose of maintaining the exterior of the Units and the landscaping around the Units and for any necessary repair or reconstruction as provided in Article VI, Section 6.

13.2 Developmental Easements. Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Properties, for the purpose of completing its work upon the real property described in Exhibit "A" and development of the additional properties if it is brought within the scheme of this Declaration. Further, Declarant reserves the right to continue to use the Properties, and any roadways, walkways, sales offices, model units, signs and parking spaces located on The Properties, in its efforts to market commercial units or lots constructed on the Properties. This paragraph may not be amended without the written

consent of Declarant.

13.3 Encroachments. There shall be reciprocal appurtenant easements of encroachment as between each Unit or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Unit or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an owner or tenant.

13.4 Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter, change, obstruct or rechannel the natural drainage on any Unit whatsoever so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the written consent of the Owner of the affected property.

13.5 Right of Entry. The Townhome Association, or its duly authorized Manager, shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article IV or VI hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules, which right may be exercised by any member of the Board, the Townhome Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Townhome Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

ARTICLE XIV
CERTAIN RIGHTS OF DECLARANT

14.1 Declarant Rights. Notwithstanding any other provisions herein, so long as the Declarant continues to own any of the Units, the following provisions shall be deemed to be in full force and effect:

(a) The Declarant shall have the right at anytime to sell, transfer, lease or relet any Unit(s) which the Declarant continues to own after this Declaration has been recorded, without regard to any restrictions, if any, relating to the sale, transfer, lease or form of lease of Units contained herein and without the consent or approval of the Townhome Association or any other Owner being required.

(b) Without limiting the foregoing, the Declarant shall have the power, but not the obligation, acting alone, at any time (and from time to time) so long as the Declarant owns at least one Unit to: 1)amend the Declaration to cause the same to conform to the requirements of the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, as set forth, respectively, in "FNMA Conventional Home Mortgage Selling Contract Supplement" and

"Seller's Guide Conventional Mortgages", as the same may be amended from time to time; and/or 2)the requirements of the Department of Housing and Urban Development as same may be amended from time to time.

(c) The Declarant shall have the rights (i) to use or grant the use of a portion of the Common Elements for the purpose of aiding in the sale or rental of Units; (ii) to use portions of the Property for parking for prospective purchasers or lessees of Units and such other parties as the Declarant determines; (iii) to erect and display signs, billboards and placards and store and keep the same on the Property; (iv) to distribute audio and visual promotional material upon the Common Elements; and (v) to use any Unit which it owns or leases as a sales and/or rental office, management office or laundry and maintenance facility.

14.2 Maintenance Easement. Declarant reserves for itself and its successors and assigns, and for the Townhome Association, and its officers, agents employees and successors and assigns, an easement to enter on, across, over, in and under any portion of the Properties for the purpose of maintaining the exterior of and the landscaping around the Units.

14.3 Utility Easements. Declarant hereby reserves for itself and its successors and assigns a general easement upon, across, over, in and under the Properties for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems and indoor sprinkler systems. No water, sewer, gas, telephone, electrical, communications, sprinkler systems or other utility or service lines, systems or facilities may be installed or relocated on, under and over the Property unless approved in writing by Declarant. These items may be temporarily installed above ground during construction, if approved by Declarant, subject to the requirements, if any of the County of Charleston or any other authority having jurisdiction over the Properties.

14.4 Drainage and Irrigation Easements. Declarant reserves for itself and its successors and assigns, and for the Townhome Association, and its officers, agents, employees, and successors and assigns, an easement to enter on, across, over, in and under any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself and its successors and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for the maintenance of the Common Elements and for such other purposes as Declarant may from time to time deem appropriate.

14.5 General Provision. Any entity using these general easements provided under this Article XIV shall use its best efforts to install and maintain the easements for utilities, drainage, or irrigation ditches without disturbing the uses of the Owners, the Townhome Association and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible after completion of its work, shall restore the surface to its original condition as soon as possible after completion of its work. Should any entity furnishing a service covered by these general easements request a specific easement by separate recordable document, Declarant shall have, and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, avoid, extinguish, or modify any other recorded easement affecting the

Property.

14.6 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction of Units on the Property and other consideration by Declarant.

14.7 General Reservations. Declarant reserves (a) the right to dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease repair, maintenance, or regulation of parking and/or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners, and/or the Townhome Association.

ARTICLE XV
Mortgagee Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws of the Townhome Association, notwithstanding any other provisions contained therein:

15.1. Notices of Action.

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

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

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

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

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

15.2. Other Provisions for First Lien Holders.

To the extent not inconsistent with South Carolina law and any other provisions of the Governing Documents

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

(b) termination of the Townhome Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders representing more than fifty percent (50%) of the votes of Units subject to Mortgages held by Eligible Holders.

15.3. No Priority.

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.4. Notice to Townhome Association.

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

15.5. Failure of Mortgagee To Respond.

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

15.6. Construction of Article XIV.

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

ARTICLE XVI
Party Walls

16.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units upon the Properties and placed on the dividing line between two or more

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 damages due to negligence or willful acts or omissions shall apply thereto.

16.2 **Sharing of Repair and Maintenance.** The reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Owners who make use of the wall in proportion to such use.

16.3 **Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who by his or her negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

16.4 **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

16.5 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the owners under any rule of law regarding liability for negligent or willful acts or omissions.

16.6 **Structural Integrity.** No Owner, his or her tenant, guest, invitees or contractors shall by their acts or omissions impair or cause to be impaired the structural integrity of any party wall or party fences without prior written consent of all Owners having an interest therein.

ARTICLE XVII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

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

Prior to the Townhome Association or any Owner commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect at the Community or any improvement constructed upon the Property, Declarant shall have the right to meet in good faith and discuss the subject of the proceeding with the Owners, or the particular

Owner, and to access, inspect, correct the condition of, or redesign any portion of the Community, including any improvement as to which a defect is alleged. In addition, the Townhome Association, or the Owner, shall notify the builder who constructed such improvement prior to retaining any other expert witness or for other litigation purposes.

17.2 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Townhome Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Sections 17.3 ("Claims") using the procedures set forth in Section 17.4.

17.3. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Property (other than matters of aesthetic judgment under Article XI, which shall not be subject to review) shall be subject to the provisions of Section 17.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 17.4:

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

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

(c) any suit between Owners, which does not include Declarant or the Townhome Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

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

(e) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 17.4(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 17.4.

17.4. Mandatory Procedures.

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

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

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

(iii) Claimant's proposed remedy; and

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

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

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

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

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

(v) Within five (5) days of the Termination of Mediation, the Claimant shall

make a final written demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants' original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

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

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

17.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 173.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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

17.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 17.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 17.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

ARTICLE XVIII
General Provisions

18.1 Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Townhome Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until September 30, 2027, unless otherwise expressly limited herein, after which time said covenants and restrictions sball be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Properties shall be perpetual, run with the land and shall survive any destruction, reconstruction and relocation of the physical structures, unless said provision is abrogated by the unanimous written consent of all the Unit Owners. Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership. Any amendment must by properly recorded to be effective.

18.2 Amendment by Declarant. Notwithstanding anything contained in this Declaration to the contrary, during the time the Class II Membership exists, Declarant, its successors or assigns, shall have the right to unilaterally amend any provision of this Declaration provided that such amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Unit, as determined in the sole judgment of the Declarant. Each Owner by acceptance of a deed or other conveyance to a Unit, agrees to be bound by such amendments as are permitted by this Section.

18.3 Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Townhome Association, its real and personal assets, including the Common Properties, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Townhome Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Townhome Association. No such disposition of the Townhome Association properties shall be effective to divest or diminish any right or title of any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to the Properties, unless made in accordance with the provisions of this Declaration or said covenants and deeds.

18.4 Indemnification. The Townhome Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own

individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Townhome Association (except to the extent that such officers or directors may also by members of the Townhome Association), and the Townhome Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Townhome Association shall, as a common expense, maintain adequate general liability insurance and officers' and directors' liability insurance to fund this obligation.

18.5 Compliance and Default. In the event of a violation (other than non-payment of an assessment) by an Owner, (the "Defaulting Owner") of the provisions of this Declaration and/or By-Laws as the same may be amended from time to time, the Townhome Association may notify the Defaulting Owner and its Mortgagee, if any, in writing of said violation and if such violation shall continue for a period of ten (10) days from the day notice is mailed to the last known address provided to the Townhome Association by the Defaulting Owner, the Townhome Association shall have the election to (a) fine the Defaulting Owner as the Board of Directors may fix fines for violation for the fiscal year prior to the year the violation occurs; or (b) file an action at law to recover damages on behalf of the Townhome Association and/or remaining owners; or (c) file an action to enforce performance on the part of the Defaulting Owner; or (d) file an action for such relief as may be necessary. If a Court of competent jurisdiction decides in favor of the Townhome Association, the Defaulting Owner shall reimburse the Townhome Association the attorney's fees, court costs, and expenses incurred in bringing the action. If a Court of competent jurisdiction decides in favor of the Defaulting Owner, the Townhome Association shall reimburse the Defaulting Owner the attorney's fees, court costs, and expenses incurred in defending the action

In the event the Townhome Association fails to file an action to cure a default or violation by a Defaulting Owner within thirty (30) days from the date a written request therefor is made to the Townhome Association from any other Owner, then the non-defaulting Owner is hereby authorized to bring action in the manner aforesaid on behalf of the Townhome Association and said non-defaulting Owner shall be entitled to the same remedies and obligations herein provided.

18.6 Delegation of Use. Any owner may delegate, in accordance with the By-Laws of the Townhome Association, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees.

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

18.8 Perpetuities. If any of the covenants, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendents of President George W. Bush.

18.9. Exhibits. Exhibit "A," and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Declaration. Exhibit "C" is

incorporated by this reference and may be amended in accordance with ArticleXII or this Article. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 10th day September, 2007.

D.R. Horton, Inc.

By: _____
R. Doug Brown
Division President

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON) **(S.C. CODE ANN. §30-5-30(B)(C))**

I, the undersigned, a Notary Public for South Carolina, do hereby certify that R. Doug Brown, as Division President of D.R. Horton, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument, as the act and deed of said corporation.

Witness my hand and official seal this 10th day of September, 2007.

_____ (L.S.)
Notary Public in and for S.C.

My Commission Expires: 9-16-13

EXHIBIT "A"
LAND INITIALLY SUBMITTED

All that certain piece, parcel or tract of land situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, being shown and designated as "PARCEL 31A 7.051 acres", on a plat of survey made by Southeastern Surveying of Charleston, Inc., entitled, "A SUBDIVISION PLAT OF PARCELS 31A, 31B, 31C AND 31D PARK WEST, OWNED BY PARK WEST DEVELOPMENT, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA", dated August 16, 2005, and recorded in the RMC Office for Charleston County on September 16, 2005, in Plat Book EJ at Page 223.

SAID piece, parcel or tract of land having such size, shape, dimensions, and boundaries as will by reference to said plat more fully appear.

THIS BEING a the same property conveyed to Declarant herein by deed of Park West Development, Inc. dated February 14, 2006 and recorded in Deed Book Z572 at Page 427.

EXHIBIT "B"
LAND SUBJECT TO ANNEXATION

Any and all real property lying and being within five miles from any boundary of the property described in Exhibit "A.

Initial Rules and Regulations

The following rules, regulations and restrictions shall apply to Mansfield at Park West until such time as they are amended, modified, repealed, or limited pursuant to Article XII of the Declaration.

1. Residential Purposes. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for Declarant to assist in the sale of property described in Exhibits "A" or "B," offices for any property manager retained by the Townhome Association, and business offices for Declarant or the Townhome Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities and Prohibited Conditions. The following activities and/or conditions are prohibited within the Community *unless expressly authorized in writing by the Board*, and then, subject to such conditions as the Board may impose:

(a) Exterior Additions or Alterations. Construction, erection, placement, or modification of any structure or thing, permanently or temporarily, on the outside portion of a Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article XI of the Declaration. This shall include, without limitation, conversion of any carport or garage to finished space for habitable use, modification of any landscaped or grassed areas, removal of trees, signs, basketball hoops, swing sets, and similar sports and play equipment; clotheslines, garbage cans, woodpiles, in-ground swimming pools, docks, piers, and similar structures, hedges, walls, dog runs, animal pens, or fences of any kind. Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Unit with mulch or stone.

(b) Vehicles. Parking any vehicles on streets, thoroughfares or Areas of Common Responsibility (with exception of designated parking areas) and parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other water craft, trailers, snowmobiles, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or Area of Common Responsibility.

(c) Motorized Vehicles. Operation of motorized vehicles with exception of those designed for use by handicapped persons, including, without limitation, any golf carts, electric or gas powered scooters, four-wheelers, go-carts, or similar vehicles, on any walking or jogging trails, sidewalks or other pathways intended for pedestrian traffic.

(d) Animals. Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats (the combined number of

dogs and cats not to exceed three(3)), or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units, shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Owners shall clean up behind any Pet while walking such Pet on any Common Property. Pets shall be registered, licensed, and inoculated as required by law.

(e) Nuisance or Offensive Activities. Any noxious or offensive activity which, in the reasonable determination of the Board, tends to cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other Units or persons using the Area of Common Responsibility or other conditions which tend to disturb the peace of or threaten the safety of the occupants of other Units or persons using the Area of Common Responsibility. Without limiting the generality of the foregoing, any activity which emits foul or obnoxious odors outside the Unit, barking dogs, or the use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units (except alarm devices used exclusively for security purposes) are prohibited.

(f) Illegal Activities. Any activity which violates local, state, or federal laws or regulations.

(g) Unsanitary Activities. Any activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit, including, without limitation, accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers. Such containers shall be either screened from view or kept inside, except as reasonably necessary for garbage pick ups;

(h) Burning. Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(i) Firearms/Fireworks. Discharge of firearms, firecrackers, fireworks or other explosive devices.

(j) Dumping. Dumping grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to minimize runoff, and Declarant and builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Storage. On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and for operation of lawn mowers and similar tools or equipment, and the Townhome Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article XI;

(l) Wildlife. Capturing, trapping, or killing of wildlife within the Community, except in circumstances posing an imminent threat to the safety of persons using the Community.

(m) Environment. Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community.

(n) Drainage. Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm drains, except that Declarant and the Association shall have such right; 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;

(o) Irrigation Systems. Installation of any sprinkler or irrigation systems or wells of any type, other than those initially installed by Declarant or a Declarant approved builder, which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Community, except that Declarant and the Townhome Association shall be permitted and shall have the exclusive right and easement to draw water from such sources within the Community for purposes of irrigation and such other purposes as Declarant or the Townhome Association shall deem desirable;

(p) Bodies of Water. Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within the Community, provided, however, that fishing from the shore shall be permitted with appropriate licenses. The Townhome Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes ponds, streams, or other bodies of water within or adjacent to the Community.

(q) Time-Sharing. Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program.

(r) Business or Trade. Any business, trade or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Community; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Community which is noticeable greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents within the Community, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether; (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Community or its use of any Units which it owns within the Community, including the operation of a timeshare or similar program.

(s) Subdivision of Property. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit, after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Units which it owns.

(t) General. Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community;

(u) Unsightly Structures. Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair;

(v) Exterior Antennas. Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; and (iii) antennas designed to receive television broadcast signals (i), (ii), and (iiii), collectively, "Permitted Devices") shall be permitted; however, any such Permitted Device must be placed in the least conspicuous location on the Unit at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property, or is screened from the view of adjacent Units in a manner consistent with the Community-Wide Standard and the Architectural Guidelines. Notwithstanding anything contained herein to the contrary, Declarant and the Townhome Association shall have the right, without obligation, to erect or install and maintain satellite dishes, antennas, or similar devices for the benefit of all or a portion of the Community

(w) Exterior Decorative Items. Installation, display, or presence of exterior decorative items, including, but not limited to, statuary, wishing balls and fountains, but not including flags.

3. Leasing of Units. "Leasing," for purpose of this Paragraph, is defined as regular exclusive occupancy of a Unit by any person, other than the Owner, for which the

Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term; however, in no case shall such term be shorter than twelve months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Governing Document.

EXHIBIT "D"

BK P 638PG453

BYLAWS

OF

MANSFIELD AT PARK WEST, INC.

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BYLAWS

OF

MANSFIELD AT PARK WEST, INC.

A South Carolina Nonprofit Mutual Benefit Corporation

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act, the Board of Directors of Mansfield at Park West, Inc., a South Carolina nonprofit mutual benefit corporation, has or intends to adopt the following Bylaws for such corporation.

Article I
Name, Principal Office, and Definitions

1.1 Name.

The name of the corporation is Mansfield at Park West, Inc. ("Association").

1.2 Principal Office.

The Association's principal office shall be located in Charleston County, South Carolina. The Association may have such other offices, either within or outside the State of South Carolina, as the Board of Directors may determine or as the Association's affairs require.

1.3 Definitions.

The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West filed in the Office of Register of Mesne Conveyances for Charleston County, South Carolina, as it may be supplemented and amended ("Declaration"), unless the context indicates otherwise.

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1 Members.

Each Owner of a Unit (as defined in the Declaration) shall be a Member of the Association. The Association shall have two classes of membership as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference subject to such terms and conditions as set forth in the Declaration and these Bylaws.

2.2 Notice of Ownership.

In order to confirm Membership, upon purchasing a Unit in Mansfield at Park West, the Owner of such Unit shall promptly furnish to the Association a legible copy of the instrument conveying ownership to the Owner, which copy shall be maintained in the records of the Association.

2.3 Place of Meetings.

Association meetings shall be held at the Association's principal office or at such other suitable place convenient to the Members as the Board may designate.

2.4 Annual Meetings.

The first Association meeting, whether a regular or special meeting, shall be held not later than sixty (60) days after the Class II Membership shall cease to exist and be converted to a Class I Membership as set for the Declaration, unless otherwise set by the Declarant. Meetings shall be of the Members. Subsequent regular annual meetings shall be held each year at a time set by the Board.

2.5 Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least twenty-five percent (25%) of the voting interest of the Members. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

2.6 Notice of Meetings.

It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Unit (as shown in the records of the Association) a notice of each annual or special meeting of the Association stating the time and place where it is to be held and in the notice of a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than the Unit, the Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices for annual and special meetings shall be served at least thirty (30) days but not more than sixty (60) days in advance of such meeting.

If mailed, the notice of a meeting shall be deemed to be delivered upon the earliest of: (a) the date received; (b) five (5) days after its deposit in the United States mail, as evidenced by its postmark, if mailed with first class postage affixed; (c) the date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and signed by or on behalf of the addressee; or (d) thirty (30) days after its deposit in the United States mail, as evidenced by the postmark, if mailed with other than first class, registered, or certified postage affixed.

2.7 Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.8 Adjournment of Meetings.

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At any such adjourned meeting, the necessary quorum shall be eighty (80%) percent of the Members who were present either in person or by proxy at the original meeting, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.9 Voting.

The Declaration shall set forth the Member's voting rights; such voting rights provisions are specifically incorporated by this reference.

2.10 Authority of Person Voting.

The Board shall have the authority to determine, in its sole discretion, whether any person claiming to have authority to vote on behalf of or as a Member has such authority. If the Member is a corporation, partnership, limited liability company, trust, or similar entity, the Association may require the person purporting to vote on behalf of such Member to provide reasonable evidence that such person (the "Representative") has authority to vote for such Member. Unless the authority of the Representative is challenged in writing at or before the time of voting, or is challenged orally at the time of voting, the Association may accept such Representative as a person authorized to vote for such Member, regardless of whether evidence of such authority is provided.

2.11 Proxies.

At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Unit, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

2.12 Majority.

As used in these Bylaws, the term "majority" shall mean those votes of the Members, or other group as the context may indicate, totaling more than fifty percent (50%) of the votes of Members at a meeting at which a quorum is present.

2.13 Quorum

At all meetings of Members, regular or special, the presence, in person or by proxy, of at least ten percent (10%) of the total eligible vote of the Association shall constitute a quorum. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. Any amendment to this Section shall comply with the provisions of Section 33-31-1023 of the South Carolina Nonprofit Corporation Act.

2.14 Conduct of Meetings.

The President shall preside over all Association meetings, and the Secretary shall keep the minutes of the meetings and record in the minute book all resolutions adopted and all other transactions occurring at such meetings. Further, Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation, the Declaration, these By-Laws or the statutes of the State of South Carolina.

2.15 Action Without a Meeting.

Any action to be taken at a meeting of the Members, or which may be taken at a meeting of the Members, may be taken without a meeting if written consents setting forth the action so taken are signed by Members holding at least eighty percent (80%) of the Association's voting power. Action taken without a meeting shall be effective on the date that the last consent is executed or, if required, the date Declarant consents to the action unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of the meetings of the Members filed in the permanent records of the Association.

Article III
Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1 Governing Body; Composition.

The business and affairs of the Association shall be governed by a Board of Directors. Each director shall have one equal vote. Except with respect to directors appointed by Declarant during the Declarant Control Period, the directors shall be Members or residents of the

Community; provided, however, that no two persons, being either Owners or residents, of any one Unit may serve on the Board at the same time. A "resident" shall be any person eighteen (18) years of age or older whose principal residence is a Unit within the Community. In the case of a Member which is not an individual, any officer, director, partner, member or manager of a limited liability company, or trust officer of such Member shall be eligible to serve as a director unless a written notice to the Association signed by such Member specifies otherwise; however, no Member may have more than one such representative on the Board at the time, except in the case of directors appointed by Declarant.

3.2 Number of Directors

The initial Board shall consist of three (3) directors designated in the Articles of Incorporation. Thereafter, the Board shall consist of three (3) to seven (7) directors, as provided in Section 3.4 below.

3.3 Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to directors appointed by Declarant during the existence of the Class II Membership, nominations for election to the Board shall be made by a "Nominating Committee." The Nominating Committee shall consist of a Chairman, who shall be a Board member, and three (3) or more Members or representatives of Members. The Board shall appoint the Nominating Committee not less than thirty (30) days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election. The Nominating Committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but in no event less than the number of positions to be filled as provided in Section 3.4 below. Nominations shall also be permitted from the floor. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

3.4 Election and Term of Office.

(a) During Existence of Class II Membership. The Declarant shall have the sole and exclusive right to appoint and to remove the directors of the Association until the first to occur of the following:

(i) one hundred twenty (120) days from when ninety percent (90%) of the Units permitted for development within the Property have certificates of occupancy issued thereon and have been conveyed to Persons other than a successor Declarant;

(ii) twenty (20) years after this Declaration is Recorded; or

(iii) Upon Declarant's surrender in writing of the authority to appoint and remove directors and officers of the Association.

Notwithstanding its right to appoint and remove officers and directors of the Association, Declarant reserves the right to approve or disapprove specified actions of the Association as provided in Section 3.18 herein.

(b) Subsequent to the Existence of Class II Membership. Upon termination of the Class II Membership, directors shall be elected by the Members and hold office as follows:

(i) The Association shall call a special meeting to be held at which Members shall elect three (3) directors to serve until the next annual meeting of the Members. At the next annual meeting of the Members following termination of Class II Membership, the Members shall elect two (2) directors for an initial term of two (2) years and one (1) director for an initial term of one (1) year. At the expiration of the initial term of office of each director, a successor shall be elected to serve for a term of two (2) years. The directors shall hold office until their respective successors shall have been elected by the Association.

(ii) Thereafter, directors shall be elected at the Association's annual meeting. Each Member may cast the entire vote assigned to his Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

(iii) After the Class II Membership terminates, upon the affirmative vote of sixty-seven (67%) percent of the Members, the number of directors may be expanded to any odd number up to and including seven (7) directors. In the event the Members vote to expand the Board, the additional directors shall each serve a term of two (2) years on a staggered basis such that in one year three (3) directors would be elected for a term of two (2) years, and the following year either two (2) or four (4) directors would be elected for a term of two (2) years each, depending on total number of directors.

3.5 Removal of Directors and Vacancies.

At any regular or special meeting of the Association duly called, any one or more directors may be removed, with or without cause, by a vote of a majority of the Members and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Members shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who had three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors at a meeting.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by Declarant. Declarant shall be entitled to appoint or remove Directors at any time during the Declarant Control Period. Thereafter, Declarant may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director it has appointed.

B. Meetings.

3.6 Annual Meetings.

The Board shall hold an annual meeting within ten (10) days following each annual meeting of the Members at such time and place the Board shall fix.

3.7 Regular Meetings.

The Board may hold regular meetings at such time and place a majority of the directors shall determine, but the Board shall hold at least four (4) such meetings during each fiscal year with at least one per quarter. The Board shall give notice of the time and place of a regular meeting to directors not less than six (6) days prior to the meeting; provided, the Board need not give notice of a meeting to any director who has signed a waiver of notice or a written consent to holding the meeting.

3.8 Special Meetings.

The Board may hold special meetings when called by written notice signed by the President, the Vice President, or any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least six (6) business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be delivered or communicated at least seventy-two (72) hours before the time set for the meeting. Notices of such meetings shall also be delivered to the Members contemporaneously with the directors' notices.

3.9 Waiver of Notice.

The transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present; and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10 Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence at such meeting.

3.11 Quorum of Board of Directors.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless the Bylaws or the Declaration specifically provide otherwise. A meeting at which a quorum is present initially may continue to transact business notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact without further notice any business which it might have transacted at the original meeting. Any amendments to this Section shall comply with the provisions of the Section 33-31-1024 of the South Carolina Nonprofit Corporation Act.

3.12 Compensation.

Directors shall not receive any compensation from the Association for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director makes his or her interest known to the Board prior to entering into such contract and a majority of the Board, excluding the interested director, approves such contract.

3.13 Conduct of Meetings.

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 Open Meetings.

Subject to the provisions of Section 3.15, all Board meetings shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests permission for that person to speak. In such case, the President may limit the time such person may speak. Notwithstanding the above, the President may adjourn any

Board meeting and reconvene in executive session, and may exclude persons other than directors. Only the following matters are open for discussion in executive session:

(a) matters pertaining to Association employees or involving the employment, promotion, discipline, or dismissal of an officer, agent or employee of the Association;

(b) consultation with legal counsel regarding disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) investigative proceedings concerning possible or actual criminal conduct;

(d) matters subject to specific constitutional, statutory; or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and

(e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

3.15 Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors, or any action that may be taken at a meeting of the directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.16 Powers.

The Board shall have all of the powers and duties necessary for managing the business and affairs of the Association and for performing all responsibilities and exercising all of the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things not limited by the Governing Documents or South Carolina law to be done and exercised exclusively by the Members.

3.17 Duties.

The Board's duties shall include, without limitation:

(a) causing to be prepared and adopting, in accordance with the Declaration, an annual budget establishing each Member's share of the Common Expenses and any Neighborhood Expenses;

(b) levying and collecting such assessments from the Members;

(c) providing for the operation, care, upkeep, and maintenance of the Area of

Common Responsibility and entering into agreements with adjacent property owners to allocate maintenance responsibilities and costs of certain public rights-of-way and other property within or adjacent to the Community;

(d) designating, hiring, and dismissing the personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' business judgment, in depositories other than banks;

(f) making and amending Rules and Regulations in accordance with the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in Section 8.5 of the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(o) indemnifying an Association director, officer , or committee member, or former Association director, officer, or committee member to the extent such indemnity is required by South Carolina law, the Articles of Incorporation, or the Declaration; and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

3.18 Right of Declarant to Disapprove Actions.

During Declarant Annexation Period as set forth in the Declaration, Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in Declarant's sole judgment, would tend to impair rights of Declarant or any builders approved by Declarant under the Declaration or these Bylaws, interfere with the development or construction of any portion of the Community, or diminish the level of services the Association provides.

(a) The Association shall give Declarant 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 it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.7, 3.8, 3.9, and 3.10 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 said meeting; and

(b) The Association shall give Declarant the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproved 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 shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. Declarant, acting through any officer, 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. 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 the Board, the Association, or any committee. 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 repair or any expenditure required to comply with applicable laws and regulations.

3.19 Management.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. Declarant or an affiliate of Declarant may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.20 Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) the Association's cash accounts shall not be commingled with any other accounts;

(d) the managing agent shall accept no remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, services fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) the managing agent shall disclose to the Board promptly any financial or other interest which the managing agent may have in any firm providing goods or services to the Association;

(f) an annual report consisting of at least the following shall be made available to all Members within one-hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; however, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Declarant Control Period, the annual report shall include certified financial statement.

3.21 Borrowing.

The Association shall have the power to borrow money for any legal purpose; however, the Board shall obtain Member approval in the same manner provided in Section 9.2 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed twenty percent (20%) of the Association's budgeted gross expenses for that fiscal year. No Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least eighty percent (80%) of the total vote in the Association.

3.22 Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with residential or nonresidential owners' associations within the outside the Community; however, any common management agreement shall require the Board's consent.

3.23 Enforcement.

In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Governing Documents. In addition, the Board may suspend any services the Association provides to an Owner or an Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the Association shall first assess the fine against the occupant, tenant, employee, guest, or invitee; however, if the occupant does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Association. The Board's failure to enforce any provision of the Governing Documents shall not be deemed a waiver of the Board's right to do so thereafter.

(a) Notice. Prior to imposition of certain sanctions requiring notice under the Declaration, the Board, or its delegate, shall serve the alleged violator with written notice describing (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; however, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self help (specifically including, but not limited to, towing vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIII of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessary compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or Person responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes or exercising this power of self help shall not be deemed as trespass.

3.24 Board Standards.

While conducting the Association's business affairs, the Board shall be protected by the business judgment rule. The business judgment rule protects a director appointed by Declarant from personal liability so long as the director: (i) serves in a manner the director believes to be in the best interests of the Association and the Members; or (ii) serves in good faith. The business judgment rule protects a director not appointed by Declarant from liability for actions taken or omissions made in the performance of such director's duties, except for liability for wanton and willful acts or omissions.

In fulfilling its governance responsibilities, the Board's actions shall be governed and tested by the rule of reasonableness. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

The burden of proof in any challenge to an action or inaction by a director shall be on the party asserting liability.

The operational standards of the Board and any committee the Board appoints shall be the requirements set forth in the Governing Documents or the minimum standards which Declarant, the Board, and the Architectural Review Committee may establish. Such standard shall, in all cases, meet or exceed the standards set by Declarant and the Board during the Declarant Control Period. Operational standards may evolve as the needs and demands of the Community change.

3.25 Board Training Seminar.

Each director is encouraged to complete a board training seminar within such director's first six months of directorship. Such seminar shall educate the directors about their responsibilities and duties. The seminar may be in live, video or audio tape, or other format.

Article IV
Officers

4.1 Officers.

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two (2) or more offices, except the offices of the President and Secretary. Moreover, the Secretary shall be responsible for preparing minutes of all directors' and Members' meetings and for authenticating records of the corporation.

4.2 Election and Term of Office.

The Board shall elect the officers of the Association at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Association's interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Secretary shall prepare, execute, certify, and Record amendments to the Declaration as provided in Section 16.3 of the Declaration. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

4.5 Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at

any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks and other Association instruments shall be executed by at least two (2) officers or by such other person or persons as a Board resolution may designate.

4.7 Compensation.

Officers' compensation shall be subject to the same limitations as directors' compensation under Section 3.12.

Article V
Committees

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate be resolution. Each committee shall operate in accordance with the terms of such resolution.

Article VI
Miscellaneous

6.1 Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order (the then current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law or the Governing Documents.

6.3 Conflicts.

If there are conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any

Member, or the duly appointed representative of any of the foregoing, at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, Bylaws, and Articles of Incorporation, including any amendments, any Supplemental Declarations, the Rules and Regulations, the membership register, books of account, and the minutes of meetings of the Members, the Board and committees. The Board shall provide for such inspection to take place at the Association's office or at such at other place within the Community as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right, at any reasonable time, to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

6.5 Notices.

Unless the Declaration or these Bylaws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendments.

(a) By Declarant. During the Declarant Control Period, Declarant unilaterally may amend these Bylaws for any purpose. Thereafter, Declarant or the Board unilaterally may amend these Bylaws at any time, and from time to time, if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender,

purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; provided, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing greater than fifty percent (50%) of the total vote in the Association, and the consent of Declarant, so long as Declarant during Declarant Annexation Period. In addition, the approval requirements set forth in Article XVII of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) FHA/VA Approval of Amendments. The U.S. Department of Veterans Affairs (if it is guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such Mortgages) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such Mortgages) shall have the right to veto amendments to these Bylaws during the Declarant Control Period.

(d) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon Recordation, unless the amendment specifies a later effective date. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. The Secretary shall prepare, execute, certify, and Record amendments to these Bylaws.

No amendment may remove, revoke, or modify any of Declarant's rights or privileges without its written consent during the Declarant Annexation Period.

SIGNATURE PAGE TO FOLLOW

BK P 638PG474

Certification

I, undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Mansfield at Park West, Inc., a South Carolina Non Profit Corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 10th day of September. 2007.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 10th day of September, 2007

[SEAL]
Herbert P. French
Secretary

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RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

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1991 GLENN'S BAY ROAD
SURFSIDE BEACH SC 29575

Number of Pages:

67

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September 13, 2007

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Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
DECLAR/COV/ETC	$ 72.00
Postage	$ 2.00
TOTAL	$ 74.00

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