



BP0276344

**Drawn By & Return To:**

Parker Poe Adams & Bernstein LLP (BMM)  
401 South Tryon Street, Suite 3000  
Charlotte, North Carolina 28202

**FOURTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS,  
AND EASEMENTS FOR CAROLINA BAY**

**FOURTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS,  
AND EASEMENTS FOR CAROLINA BAY (“Fourth Amendment”)** is made this 4<sup>th</sup>  
day of September, 2012, by **CENTEX HOMES**, a Nevada general partnership  
 (“**Declarant**”).

**WITNESSETH:**

A. Declarant executed that certain Declaration of Covenants, Restrictions, and Easement for Carolina Bay which was recorded on February 7, 2006 in the RMC Office for Charleston County, South Carolina (“**RMC Office**”), in Book V573, Page 762 and subsequently amended and restated that Declaration by executing the Amended and Restated Declaration of Covenants, Restrictions, and Easements for Carolina Bay recorded in Book U611, Page 848, RMC Office (collectively, as amended and restated, the “**Original Declaration**”).

B. Declarant subsequently amended the Original Declaration by executing the First Amendment to Amended and Restated Declaration of Covenants, Restrictions and Easements for Carolina Bay recorded in Book J642, Page 433, RMC Office, the Second Amendment to Amended and Restated Declaration of Covenants, Restrictions and Easements for Carolina Bay recorded in Book N654, Page 174, RMC Office, and the Third Amendment to Declaration of Covenants, Restrictions, and Easements for Carolina Bay (To Withdraw Property) recorded in Book 0144, Page 680, RMC Office (collectively with the Original Declaration and as amended and supplemented, the **Declaration**”).

C. Pursuant to the terms of Section A of Article 14 of the Declaration, the Declarant may amend the Declaration at any time, by written instrument duly recorded in the RMC Office, with or without the prior consent or approval of any Member.

D. Declarant desires to amend certain rights under the Declaration with respect to the Apartment Owner and Apartment Units.

NOW, THEREFORE, Declarant hereby amends the Declaration as set forth below.

1. **Definitions; Recitals.** The definitions set forth in the Declaration are incorporated herein by reference. The recitals set forth above are incorporated herein by reference.
2. **Apartment Parcel.** “Apartment Parcel” shall mean a portion of the Project Land shown on a Final Plat as a delineated parcel of land on which a “For Rent” multi-family residential complex is built.

3. **Assessments on Apartment Units.** Payment of the Base Assessments for the Apartment Units within an Apartment Parcel shall be the sole obligation of the respective Apartment Owner. Because the annual Base Assessments for Apartment Units within an Apartment Parcel shall be levied against the Apartment Parcel (and not the Apartment Units) and are payable by an Apartment Owner directly to the Association, the provisions of this Fourth Amendment are intended to supplement the provisions of Article 6 of the Declaration in order to establish the following procedures as to the billing and payment of such assessments.

4.1 **Billing and Payment Procedure for Base Assessments.** Commencing on December 1, 2012, and thereafter on December 1 of each subsequent calendar year, the Association shall deliver to each Apartment Owner, the proposed Budget of Operating Expenses of the Association for the upcoming fiscal year (the “**Budget Year**”), together with a statement in reasonable detail (the “**Annual Estimate**”) setting forth (i) the percentage increase, if any, in the amount of the regular Base Assessment attributable to the detached Living Units in the Project (i.e. all Living Units other than townhome or condominium units and excluding Apartment Units) based upon the proposed Budget for the applicable Budget Year, (ii) the amount of the annual Base Assessment for an Apartment Units applicable during the upcoming Budget Year, and (iii) a calculation of the total amount of Base Assessments allocated to the Apartment Parcel determined by multiplying the number of completed Apartment Units in the Apartment Parcel (as indicated by the number of certificates of occupancy issued by the City for the subject Apartment Parcel) as of the date of the Annual Estimate by the amount indicated in (ii) above. On or before the date that is 30 days following an Apartment Owner’s receipt of the proposed Budget and the Annual Estimate, and subject to adjustment at the end of the Budget Year that is the subject of the Annual Estimate as hereinafter provided, the Apartment Owner shall pay the total amount of Base Assessments allocated to the Apartment Parcel and indicated on the Annual Estimate for the current Budget Year.

The total amount of Base Assessments payable by an Apartment Owner shall be adjusted, if necessary, to account for the addition of Apartment Units that are completed during the Budget Year and not accounted for on the Annual Estimate for the subject Budget Year. Such adjustment shall be calculated based on the dates of issuance by the City of certificates of occupancy for those Apartment Units (if any) that are completed during a Budget Year after the date of the Annual Estimate for the subject Budget Year. Such adjustment shall be accomplished by an annual reconciliation based upon a statement prepared by the Association and delivered to an Apartment Owner within thirty (30) days following the expiration of any Budget Year (the “**Annual Adjustment**”). The Annual Adjustment shall (i) indicate the total amount of Base Assessments actually paid by the Apartment Owner for the applicable Budget Year as accordance based upon the number of Apartment Units indicated on the Annual Estimate for such Budget Year, and (ii) show any adjustment in such amount as a result of the completion of additional Apartment Units on the subject Apartment Parcel during such Budget Year that were not accounted for on the Annual Estimate for that same Budget Year. For the avoidance of doubt, the Base Assessments applicable to Apartment Units that are completed during the Budget Year shall be prorated on a calendar year basis from the completion date through the end of the Budget Year. In the event the Annual Adjustment indicates a deficiency in the amount of the Base Assessments paid by the Apartment Owner for the applicable Budget Year due to an increase in the number of completed Apartment Units from the number shown on the Annual Estimate, the subject Apartment Owner shall pay the amount of such deficiency to the

Association within thirty (30) days following the Apartment Owner's receipt of such Annual Adjustment.

4.2 **Special Assessments on Apartment Units/Parcels.** Except as provided herein, Apartment Parcels and Apartment Units are not subject to the provisions of Section D of Article 6. The Apartment Units shall be subject only to those Special Assessments levied solely for the purpose of repairing, replacing, relocating, or constructing additional Improvements on the "Common Walkways" (defined below). If a Special Assessment for the purposes described in the foregoing sentence is levied against the Apartment Units, the amount of any such Special Assessment applicable to an Apartment Parcel shall be determined by multiplying the anticipated cost of such repair, replacement, relocation, or Improvement of the Common Walkways by the quotient of: (x) the total number of completed Apartment Units located on the Apartment Parcel, divided by (y) the total number of Units in the Project (being the combined total number of Apartment Units, Living Units, and Commercial Lots).

4.3 **Working Capital.** The provisions of Section H of Article 6 shall not apply to Apartment Parcels or Apartment Units. The conveyance of an Apartment Parcel or the leasing or sub-leasing of an Apartment Unit shall be deemed to be an "Exempt Transfer" in accordance with the provisions of Section H of Article 6.

4. **Amendment.** Any amendment to the Declaration or the Bylaws that (i) materially changes the right of any Apartment Owner to the use and enjoyment of such owner's Apartment Parcel, (ii) adversely affects the title to any Apartment Parcel, or (iii) otherwise would have a material adverse effects on such Apartment Owner or their Apartment Parcel, or on the tenants and occupants of any Apartment Units located on such Apartment Parcel, shall require the prior written consent of the Apartment Owner of the subject Apartment Parcel.

5. **Walking Trails.** The Apartment Owners are hereby granted a non-exclusive perpetual easement for their benefit and for the benefit of the tenants of the Apartment Units within their Apartment Parcels, and such tenants' guests and invitees to use those portions of the Project Land designated on any Final Plat as a walking trail or a pedestrian trail or access area (a "Common Walkway"). The right to use the Common Walkways in the Project is subject to any rules and regulations adopted by the Board with regard to the use of the Common Walkways.

6. **No Use of Recreational Facilities.** Except for the right to use the Walking Trails as set forth above in this Fourth Amendment, the Apartment Owners and the tenants of the Apartment Units are not permitted to use the Recreational Facilities within the Project that are owned, leased, or licensed by the Association including, but not limited to, any swimming pool, pool house, parking area, dog park, tot lots, or other Association Property intended for the recreational use and enjoyment of the Residential Owners within the Project. An Apartment Owner shall insert a provision in all rental agreements and leases for the Apartment Units within the Apartment Parcel owned by such Apartment Owner in order to give notice of this restriction.

7. **Full Force and Effect.** The Declaration, as amended hereby, remains in full force and effect. To the extent this Fourth Amendment conflicts with the Declaration, this Fourth Amendment shall control.

[signature page follows]

IN WITNESS WHEREOF, the Declarant has executed this Fourth Amendment on the date and year first written above.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

**DECLARANT:**

**CENTEX HOMES**, a Nevada general partnership,

By: Centex Real Estate Corporation, a Nevada corporation, its Managing General Partner

[Signature]  
Witness #1

By: [Signature]  
Name: William N. Cutler  
Title: Division President

Jawannah Thompson  
Witness #2

STATE OF South Carolina )  
COUNTY OF Charleston ) SS

This instrument was acknowledged before me this 4 day of September, 2012, by William Cutler, the Division President of Centex Real Estate Corporation, a Nevada corporation, Managing General Partner of Centex Homes, a Nevada general partnership, on behalf of said general partnership.

Jawannah Thompson (SEAL)  
Notary Public for State of South Carolina  
My commission expires: 11.19.19



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DODDS & HENNESSY, L.L.P.  
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