

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C.
CODE ANN. SECTION 15-48-10 et seq.**

**SITE PREPARATION PLANT
PROTECTION AND PRESERVATION AGREEMENT**

Revised 8-7-18

This Agreement is between the Architectural Review Committee (ARC) of the Cliff Ridge Colony Homeowners Association, Inc (hereinafter "Association") and _____ (hereinafter "Lot Owner"), effective this _____ day of _____, 20_____.

This Agreement applies to construction and renovation. All other situations are governed by the Restrictive Covenants.

A. RESTRICTIVE COVENANTS. Article X, Section 10, of the Amended and Restated Declaration of Restrictive Covenants for Cliff Ridge Colony (the "Covenants") prohibit removal of:

1. "any living tree exceeding six (6) inches in diameter, measured two feet from ground level;"
2. "any dogwood or other ornamental tree older than two years;" and
3. "any mature rhododendron, mountain laurel or other indigenous flowering shrub"

without prior consent of the Architectural Review Committee (the "ARC").

This Covenant applies whether the plant or tree removal is contemplated for the purpose of construction or of improvements upon Lots.

The purpose of this provision is to maintain the natural and forested character within the community.

B. PURPOSE OF AGREEMENT. In accordance with the Covenants, this Agreement purports to plan for removal that accommodates the Lot Owner's plans alongside preserving valuable, existing native plants and incorporating existing native plant communities into the site plan wherever feasible. Nothing in this Agreement eliminates the need to obtain approval from the ARC for any and all plant and tree removal as defined in Section A. above PRIOR TO any removal.

C. PLANT REMOVAL APPROVAL.

1. No person, agent or employee thereof, shall effectively destroy or remove native plants from any lot or property within the subdivision without first obtaining written approval of the ARC.

2. Approvals for the removal, relocation or replacement of native plants covered herein shall be obtained by submitting a landscaping plan to the ARC as set forth in the procedure currently in place.

3. A landscaping plan shall be submitted whether the landscaping is for purposes of improving the lot or together with construction plans.

D. APPLICATION PROCEDURE FOR APPROVAL

1. The lot owner will submit a landscape site plan and plant inventory for ARC's approval, prior to any land clearance and construction activity. The landscape plan shall seek to preserve existing native plants and to otherwise enhance the aesthetic appearance of the lot by the incorporation of existing native plants into the site design process. Any removal of native plants shall detail the location, size and nature of the plant removal.

2. Each application for plant removal shall be accompanied by a copy of a generalized native plant inventory which shall consist of the following:

a. A generalized plant inventory showing the approximate location and extent of native plants upon the site for all trees with a 10 inch caliper trunk measured 4 feet from the trunk base, and all other plants (i.e. mountain laurel and rhododendron with a 2 inch caliper trunk measure 4 feet from the trunk base).

b. The inventory may be in the form of hand drawn sketches accompanied by photographs of existing site conditions. The generalized plant inventory shall be prepared at the same scale as the site development plans or in some other manner which clearly illustrates the relationships between the areas of plant and the proposed site improvements. A representative of the ARC will inspect the site and confirm the plant inventory prior to approval by the ARC.

E. APPROVAL.

1. Approval Process:

a. *Issuance for lots with minimal native plant removal.* Where the ARC has verified that no significant native plant removal activity is involved, an approval shall be issued forthwith.

b. *Issuance for lots with significant native plant removal.* An approval for an application involving native plant removal activity shall be issued only under the following circumstances:

i. The native plants are within the boundaries of the outside perimeter of the proposed building pad and driveway areas, and the removal necessary for the construction of the improvements;

ii. Where a tree or other plants, due to natural circumstances, are no longer viable, are in danger of falling, are too close to existing structures so as to endanger such structures, interferes with utility services, creates unsafe conditions or constitutes a health hazard;

iii Where the affected native plants will be replaced with suitable substitutes or otherwise preserved; or

iv. Where in consideration of other pertinent factors, the ARC determines that the issuance of the approval is justified.

2. Upon receipt of Approval:

a. Lot owners who have received approval must schedule tree or plant removal with a member of ARC for inspection of the removal for insuring compliance with the Agreement. The ARC shall be permitted on the Lot prior to removal for the purpose of inspecting and/or photographing the Lot.

b. Failure to abide by the inspection requirement identified in Section D.2.a. may result in you having to replant and/or incur damages as outlined below.

3. *Relocation and replacement.* As a condition to approval of plant removal under this section, the applicant shall be required to:

a. Replace plants which will be destroyed with suitable replacements elsewhere within this site. In determining the required relocation, replacement or root pruning of plants, the ARC shall consider the needs of the intended use of the property.

b. Preserve and maintain existing plant coverage on the site and in the immediate surrounding area.

c. Reduce to a minimum the quantity of plants to be removed on the site necessary for the builder of the house and ancillary improvement such as driveways, walkways, porch, etc.

d. Specify with detail the type, size and condition of the plants to be removed.

e. Describe the feasibility of relocating the particular plants.

f. Describe the topography and drainage of the site.

F. NATIVE PLANT PROTECTION

1. *General.* During construction, all steps necessary to prevent the destruction or damaging of native plants shall be taken. Native plants destroyed or receiving major damage must be replaced by plants of equal environmental value, as specified by the ARC before occupancy or use unless approval for their removal has been granted under the approval process.

2. *Filling and Construction Debris.* During construction, unless otherwise authorized by an approval, no excess soil, additional fill, equipment, liquids or construction debris, shall be placed within the drip line of any plant that is required to be preserved in its present location.

3. *Attachments.* No attachments or wires other than those of a protective or non-damaging nature shall be attached to any plant during construction.

4. *Excavation.* Unless otherwise authorized by the plant removal permit, no soil is to be removed from within the drip line of any tree that is to remain at its original location.

5. *Installation of protection barriers.* All protection barriers shall be installed and maintained for the period of time beginning with the commencement of any land clearing or building operations and ending with the completion of the permitted clearing or building construction work on the site.

6. *On-site representative required.* The applicant for approval of plant removal shall, at the time of application, designate an on-site representative who will be responsible for the installation and the maintenance of all tree protection barriers. The representative shall be responsible for supervising the removal of all existing plants permitted to be removed. The representative shall be on-site at all times during the plant clearing operations and will report directly to the ARC.

7. *Protection of large areas of native plants.* When the circumference of an area of plants to be preserved is more than 200 linear feet, the area shall be protected during land alternation and construction activities by placing 2 x 2 wood stakes a maximum of 20 feet apart around the perimeter of the area of the plants, and typing ribbon, survey flagging, rope or similar material at a minimum height of 3 feet from stake to stake along the perimeter of such areas to be preserved.

8. *Protection of small areas of native plants.* When the circumference of an area of protected plants is less than 200 linear feet, a protective barrier shall be placed around the groups of trees and under story that is indicated to remain. The barrier shall be not less than 3 feet in height, shall limit access to the protected area, and shall be composed of wood, metal or other suitable materials which insure compliance with the intent of the Agreement. The barrier shall be highlighted with strips of survey flagging place no more than 5 feet on center. The provider barrier shall not harm the protected plants through construction or any other means.

G. VIOLATION OF AGREEMENT

1. *Damages.* Any breach of this agreement by applicant shall subject applicant to damages of up to \$1,000 per plant upon the unauthorized and unapproved removal of any trees or plants as identified in the Covenants. The Association shall also be entitled to collect reimbursement for all expenses associated with remedying the unauthorized removal and all attorney's fees and costs incurred in the enforcement of this agreement.

2. *Injunctive Relief.* The Lot Owner agrees that the Association's remedies for any violations of the Agreement are difficult to quantify as to the lost value in light of the overall aesthetic plan of the community and the difficulty in replacement value of unapproved removal. Therefore, the Lot Owner agrees that the Damages outlined in section F. 1. are reasonable. Furthermore, the Lot Owner agrees to injunctive relief for purposes of enforcing the Agreement. Further, the Lot Owner agrees that the Association or its designee shall be entitled to enter upon the Lot in question for the purpose of restoring any native plants that have been removed without approval, again said cost being born by the Lot Owner.

H. MISCELLANEOUS

1. This agreement shall be governed by the laws of the State of South Carolina. The parties agree that the State and Federal Courts in Greenville County, South Carolina shall have exclusive jurisdiction of disputes arising under this Agreement, and the parties agree to submit to the personal jurisdiction of those courts. Venue shall be properly and exclusively laid in Greenville County, South Carolina.

2. **ARBITRATION:** The parties agree that any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, shall be resolved by binding arbitration. Either party may serve a demand for arbitration upon the other party. The party serving a demand for arbitration must assert in the demand all claims then known to that party. The parties shall select an attorney licensed in the State of South Carolina to serve as arbitrator. In the event the parties cannot agree on the selection of an arbitrator then upon request of either party the arbitrator shall be selected by a resident circuit court Judge in Greenville County, South Carolina. The Arbitration shall be held at a location in Greenville County, South Carolina. If the parties proceed to arbitration, it will be conducted in accordance with the South Carolina Uniform Arbitration Act. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. Each party shall bear the costs equally of the arbitration.

3. **MEDIATION:** Prior to engaging in arbitration the parties shall endeavor to resolve any dispute by mediation in accordance with the South Carolina Alternative Dispute Resolution process (ADR). The mediator shall be selected in the same manner as the selection of an arbitrator as referred to in paragraph 2 above. Each party shall bear the costs equally of the mediation.

This agreement was executed by the parties on the dates set forth below:

ARC Chairman

Dated

Owner

Dated